



25 November 2009

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

Via email: [nfp@pc.gov.au](mailto:nfp@pc.gov.au)

Dear Chairman

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

It is with pleasure that the Institute of Chartered Accountants in Australia (the Institute) provides this submission in response to the Productivity Commission's draft report into the contribution of the not-for-profit sector, issued in October 2009.

As the Productivity Commission (the Commission) will be aware, the Institute represents over 50,000 chartered accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government, academia throughout Australia and internationally. The depth and diversity of our membership places the Institute in an ideal position to be able to provide the Commission with an independent view of the proposed reform options set out in the draft report.

The Institute response is limited to taxation and regulatory matters. We find the majority of the other recommendations highly commendable but will leave it to other respondents to provide detailed comments. The majority of the draft recommendations put forward by the Commission would – if adopted as final recommendations and ultimately agreed to by the Federal Government – go some way to addressing both real and perceived shortcomings in the existing framework for the regulation of not-for-profits in Australia. There have been a number of government inquiries over the last decade, all of which have recommended a co-ordinated national approach to not-for-profits. The Institute is hopeful that the government will now take this opportunity to implement change.

Our detailed comments are contained in an appendix to this letter, but we would like to draw your attention to the following:

1. The XBRL technology underlying Standard Business Reporting can be used in conjunction with the Standard Chart of Accounts to put into practice the principle of 'report once, use often'.
2. Care must be taken not to over-regulate the sector, as it is highly dependent on volunteers to perform functions such as director, secretary or treasurer. Any proposed reform must take the form of a national co-ordinated approach.

The Institute has over the years lodged a number of submissions as part of consultations by various arms of government.

33 Erskine Street  
Sydney NSW 2000  
GPO Box 3921  
Sydney NSW 2001  
service> 1300 137 322  
phone> 61 2 9290 1344  
fax> 61 2 9262 1512

60 Marcus Clarke Road  
Canberra ACT 2600  
phone> 61 2 6282 9600  
fax> 61 2 6282 9800

L32, 345 Queen Street  
Brisbane Qld 4000  
phone> 61 7 3233 6500  
fax> 61 7 3233 6555

L11, 1 King William Street  
Adelaide SA 5000  
phone> 61 8 8113 5500  
fax> 61 8 8231 1982

TCCL, 30 Burnett Street  
North Hobart Tas 7000  
phone> 1800 014 555  
fax> 61 3 9670 3143

L3, 600 Bourke Street  
Melbourne Vic 3000  
phone> 61 3 9641 7400  
fax> 61 3 9670 3143

Grd, 28 The Esplanade  
Perth WA 6000  
phone> 61 8 9420 0400  
fax> 61 8 9321 5141

The most recent pull together our views on the challenges facing the not for profit sector and were attached to our initial submission dated 29<sup>th</sup> May 2009 to the Productivity Commission Issues Paper on the Contribution of the Not-for-Profit Sector. We also referred you to our best practice guide to not-for-profit reporting, Enhancing Not-for-Profit Annual and Financial Reports.

In the interim, if the Commission has any questions in respect of this submission, please do not hesitate to contact the Institute's Head of Reporting, Ms Kerry Hicks, on 02 9290 5703.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lee White', with a horizontal line underneath it.

Lee White  
General Manager Leadership & Quality  
The Institute of Chartered Accountants in Australia

**Comments on Draft Productivity Commission Report*****Recommendation 5.3 - Improving comparability and usefulness***

***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'.***

Given the wide variety of organisations in the not-for-profit sector, care must be taken not to over-regulate small entities such that the spending on measurement is out of proportion to the spending on core activities. For this reason, we wholeheartedly support the principle of 'report once, use often' and the use of a Standard Chart of Accounts. The Standard Chart of Accounts, used in conjunction with XBRL technology as utilised by Standard Business Reporting within a co-ordinated national framework, has the potential to substantially reduce entities' compliance costs.

Any measurement requirements included in the legislation should be based on the measurement rules in Australian Accounting Standards, to avoid conflicting or inconsistent requirements.

***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 understand that many organisations choose to become a 'limited by guarantee' company under the Corporations Act in order to operate across various states, in spite of the fact that the Corporations Act imposes additional governance and compliance obligations in contrast to associations legislation.

We agree that Commonwealth associations legislation will assist entities in this regard that do not want the additional compliance costs of becoming a company. However, without ceding the regulation of associations to the Commonwealth, as we suggested in our previous submissions, there is a risk of making requirements more complex rather than less complex.

## Comments on Draft Productivity Commission Report

We consider that small entities, often reliant on volunteers for their financial reporting, should not have to grapple with an extra source of legislative requirements.

When proposing reform, the Commission should take the opportunity to suggest that not-for-profits should not be tied to a 30 June year end. They should be allowed to have alternative year ends that align better with their core activities (some may choose a 31 December year end to align with the academic year, for example). This will enable them to procure cost effective financial reporting and auditing services as they will not be competing with the majority of the for-profit sector.

- ***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 ceded or at least consistent with Commonwealth regulatory requirements.

We would support 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.***

It is vital that the relevant State authorities be included in this process to ensure a seamless regulatory regime for not-for-profits.

Migrating between types of incorporation (for example, from association to company limited by guarantee) would be assisted by the States ceding the regulation of associations to the Commonwealth or agreeing to uniform associations' legislation. "Forum shopping" would also become less attractive.

### ***Reducing unnecessary compliance burdens***

#### ***Recommendation 6.2***

***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.***

We fully support these proposals. In particular 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.

Fundraising should be regulated by consistent national legislation so that there is no need for national bodies to make multiple returns to various state gaming authorities.

## Comments on Draft Productivity Commission Report

### **Recommendation 6.3**

***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.***

Our support for this proposal is dependent on what the term 'charitable purposes' will be used for. In relating to financial reporting, the accounting profession uses the term "not for profit" rather than charity as it has broader application. Under the AASB accounting standards, "A not-for-profit entity is an entity whose principal objective is not the generation of profit. A not-for-profit entity can be a single entity or a group of entities comprising the parent and each of the entities that it controls". The AASB canvassed changing the definition and terminology to line up with the New Zealand terminology ("public benefit entity") in ITC 14, but did not find support with constituents.

We would prefer to see any legislation relating to the lodgement of financial statements on a database using the same terminology as that in accounting standards. The use of different terminology for different pieces of legislation leads to confusion.

### **Recommendation 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 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 (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.***

Generally, we support these proposals. We do not have a preference as to whether the regulator for not-for-profits is a separate division within the ASIC or a new entity, as long as it is adequately funded to do its work and not subject to pressure from other regulators. We can see benefits in its being a division of ASIC to be able to make use of their existing database facility. Our views on appropriate reporting thresholds can be found in our previous submissions.

These refer to a top tier requiring compliance with accounting standards and audit of \$2,000,000 in revenue and a middle tier between \$500,000 and \$2,000,000 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. However, more importantly we feel that the reporting thresholds should be consistent between the Corporations Law and the associations legislation. We understand that the government is about to release a draft bill and regulations on such thresholds for "limited by guarantee" companies.

**Comments on Draft Productivity Commission Report**

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

***Recommendation 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.***

***Recommendation 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.*

The Institute re-iterates comments previously made to this Inquiry that the tax laws that apply to the not-for-profit sector are, in accordance with our understanding, being examined in detail in the context the current Review into Australia's Future Tax System which is chaired by Dr Ken Henry.

Ultimately, the design of tax rules in this area should be guided by the policy objectives that are sought by Government in relation to the typical nature of the activities undertaken, and the integral role played, by this sector. In essence, the Institute's view is that tax laws should be designed within a framework that best aligns those laws with broader social and economic policy objectives for this sector. In this context, tax policy should be regarded as one of the tools available to correct market failings or distortions that may be unique to this sector and which, if addressed, would enhance the ability of the not-for-profit sector to achieve broader social and economic policy objectives.

The Institute fully supports any taxation initiatives identified by the Commission which seek to simplify and harmonise the tax laws (including tax administration laws) that apply to this sector.