



Australian Government

Australian Sports Commission

**Australian Sports Commission submission in response to the
Productivity Commission's Draft Research Report on the
Contribution of the Not-for-Profit Sector**

November 2009

Introduction

The Australian Sports Commission (ASC) welcomes the Productivity Commission's draft report into the Contribution of the Not-for-Profit sector and, in particular, the recognition of the sporting sector within the parameters of the study.

Mirroring key themes identified within the Productivity Commission review, recent consultation with key players in the Australian sporting sector has highlighted a number of the key issues facing the sport sector, in particular:

- Fragmentation of the Australian sports system – The structures and highly federated sports system in Australia give rise to significant potential for duplication, gaps and misalignment of effort at all levels of sport. The involvement of all three levels of government across multiple portfolios, combined with the federal structures of most national sporting organisations and the many other stakeholders in the Australian sporting system mean that 'every aspect of sport has to be managed across multiple organisational boundaries by voluntary collaborative effort involving many stakeholders' (Australian Government 2009:13) Whilst recent efforts have improved cooperation across some areas of the sporting sector, the nature of the federated system magnifies the impact of cross-jurisdictional differences in regulation and adds further complexity.
- The capacity of Australia's national sporting organisations - These bodies are responsible for the development of their sport down to the level of community clubs as well as the preparation of the elite athletes who represent Australia on the international arena. The capacity and sustainability of our national sporting organisations (as well as their state members and local club affiliates) is vital to the strength of the Australian sports system, yet the governance and management frameworks and practices continue to be fragile even at national level in many sports.
- The changing nature of the volunteer workforce in sport – More than any other part of the not-for-profit sector in Australia, volunteers are the lifeblood of the national sports system, which utilises around one third of Australia's total voluntary work population. Volunteers perform many roles and operate at national, state and community levels within the sports system. Demographic changes in Australia will continue to be a prominent feature of the community landscape over the next few years, with the retirement of the baby boomer generation and increasing migrant intake. The ageing of the baby boomers, along with dramatic health impacts, will result in a much declined volunteer base able to contribute to sport. These changes will require new and different approaches to attract and retain volunteers.
- Measuring the contribution sport makes to Australian society – There is a clear need to strengthen substantially the case for sport using credible

evidence based arguments. Sport is recognised as one of the greatest social movements, yet quantification of its benefits is fragmented and incomplete, with little longitudinal data available.

On 17 November 2009, the Australian Government released the report of the Independent Sport Panel's review of sport in Australia (the Crawford Report). That document is the culmination of an extensive consultation process across all sectors of the Australian sporting system, and further highlights relevant issues across the Australian sport system.

The ASC, as the Australian Government body responsible for the development of sport in Australia, sees that the key to a viable sporting system is working with system partners in particular Government at all levels and the sporting organisations which are the key delivery agents at national, state and local level to develop and deliver on a shared vision for Australian sport.

The ASC welcomes the integrated approach for reform and notes the five key main elements outlined in the Productivity Commission's draft report to 'reduce duplication, improve clarity, lower unnecessary compliance burdens, increase worthwhile transparency and build capacities of the sector to improve its efficiency and effectiveness'. (Productivity Commission 2009: XXXVII).

The ASC's comments on the draft report, based on feedback from the sector and its understanding from working closely with national sporting organisations and other stakeholders in the sport sector, will be organised under these main elements, with specific cross reference to the draft report recommendations where appropriate.

In addition, findings and recommendations from the Independent Sport Panel's review of sport in Australia have also been noted in this submission.

Building knowledge systems

As outlined above, there is a recognised need to better understand the Australian sporting sector and its contributions to Australian society, as well as the impact of programs and initiatives operating within the sector. At a broad level, there is an increasing requirement for the sector to better articulate the contribution collectively made by sporting organisations to the community. In addition, governments at all levels are required to clearly demonstrate the impact of their programs and policies in the sport sector, and individual sporting organisations are expected to demonstrate increasingly sophisticated evaluation techniques to justify its funding from both government and its members.

The paucity of data across the sporting system was identified in the Independent Sport Panel's review of sport in Australia, with the Panel finding that 'the lack of fundamental data on most aspects of the sport sector substantially inhibits an evidence based approach to the development of policies and strategies' (Australian Government 2009: 60) The Panel recommended that the Australian Government, in consultation with the states and territories, design and fund collections of statistics

and other data to inform policy development generally and to assist ongoing evaluation of National Sport Policy Framework strategies to ensure maximum effectiveness and efficiency'. (Australian Government 2009: 50)

The study commissioned by the ASC to assess the economic contribution of sport to Australia is a recent example of attempts to articulate and quantify the contributions of the sporting sector in Australia.

As outlined in the draft report, from a whole of framework perspective, inputs and outputs are relatively straightforward to measure, whereas outcomes and impacts present a more difficult challenge. In the sporting sector, as in many other areas of the not-for-profit sector, there are issues related to the attribution of outcomes and the requirement to aggregate existing data sources.

At the input level, there are significant gaps in data for the sporting sector, arising either from data not being available or available data being aggregated with recreation data. This is particularly relevant in relation to volunteer data, where the Australian Bureau of Statistics (ABS) values volunteer time through its Non-Profit Institutions Satellite Account, but does not report in any detail for sporting organisations. Instead, it is reported under 'Culture and Recreation'. This means that, whilst the ABS indicates more than 1.6 million people volunteer for sport and physical recreation organisations (some one third of the total voluntary work population), the sporting sector has difficulty in clearly distinguishing the financial value of that contribution.

There are difficulties defining inputs such as sporting facilities because there is no national data available on sporting facilities and infrastructure. Some local and state governments will have data sets within their own jurisdictions, but as there is no consistent framework for collecting and reporting on this data, it is not comparable between states. This makes it very difficult to ascertain a national picture, and consequently inhibits a more effective allocation of resources to meet infrastructure needs.

Whilst the framework provides a useful template for considering the contributions made by sport and sporting programs, as noted in the draft report, additional issues arise when attempting to quantify and attribute outcomes and impacts. In the sporting context, the challenge is to measure a range of outcomes such as physical and mental health and community engagement as well as impacts in areas such as connectedness to others and an individuals' sense of self.

Draft recommendation 5.1: Measuring the contribution of the sector in the future

The ASC supports draft recommendation 5.1, that the Australian Government initiate an Information Development Plan for the not-for-profit sector, and that the ABS be given responsibility for formulating the plan, consulting other stakeholders as appropriate. Given the significance of the sporting sector within the not-for-profit sector and the recommendation as outlined above from the Independent Sport

Panel's review of sport in Australia, the ASC considers it important for the sport sector to be involved in this process as one of the key stakeholders in this project. It would be appropriate to involve the Standing Committee on Recreation and Sport (representing the national and state government departments and agencies for sport) and the ABS National Centre of Culture, Recreation and Sport Statistical Unit in these discussions given the in-depth knowledge of recreation and sport data collections.

Whilst there has been an increasing focus on program evaluation in the sport sector across all levels of government, and comprehensive and independent evaluations are increasingly being undertaken, the lack of a consistent framework and definitions within the sporting system has limited the ability to aggregate data and therefore the value of these evaluations in building the picture of the contribution of the sporting sector as a whole.

Draft recommendation 5.2: Improving comparability and usefulness of information collected

The measurement framework proposed by the Productivity Commission in draft recommendation 5.2 is a timely initiative, given the long standing measurement issues for the not-for-profit sector. A major challenge for the establishment of a comprehensive measurement framework will be balancing the cross-jurisdictional needs and differences across the multiple types of not-for-profit organisations. Given this diversity, evolving meaningful sector indicators and outcome measures may require compromise between various types of not-for-profit organisations. Within this context, the ASC believes that it is critical that the full range of sector organisations, including the sporting sector, be involved in any process to further develop the framework.

An additional challenge will be the reconciliation of the varying data collection arrangements and performance measures already in place, and ensuring the consistent application of any new measurement framework.

Draft recommendation 5.4: Improving evidence-based practice through better evaluation

The ASC sees value in the establishment of a Centre for Community Service Effectiveness to promote 'best practice' approaches to evaluation as proposed in draft recommendation 5.4. The ASC considers that there is a general underinvestment by the sport sector in activities such as planning and evaluation as well as stakeholder engagement and satisfaction. This report and other studies has identified a critical role for governments to play particularly in up-skilling not-for-profit organisations and providing pragmatic and useable evaluation resources, templates and guidelines for them to access at no or low cost.

Governance and accountability – streamlining the regulatory framework

The ASC supports the need to bring together the multitude of governance, taxation and fundraising regulatory arrangements, particularly at the Commonwealth level.

Draft recommendation 6.1: Providing for appropriate legal forms

Many sporting organisations, by their very nature, operate across jurisdictional boundaries. For example, a national sporting organisation has affiliated members (state sporting associations), which in turn have regional associations and/or sporting clubs as members. Across eight different states and territories, organisations within this single sporting structure may have nine different legal structures.

As part of its role of working to support national sporting organisations and the sporting sector in particular, the ASC has developed and published *National Sporting Organisation Governance Principles of Best Practice*. The principles highlight the requirements that regardless of the Act (Corporations or Associations) under which the organisation is incorporated, if a national sporting organisation carries on business in a state other than that in which it is incorporated (and all national sporting organisations do), it is required to be registered under the *Corporations Act* as a registrable Australian body. This registration imposes additional administrative requirements on the organisation.

Therefore, whilst there can be arguments for the adoption of various legal structures, and there are limitations and benefits attached to each, the ASC encourages national sporting organisations to adopt a company limited by guarantee organisational structure. The ASC believes that, of the legal structures currently available, the more comprehensive legislation entailed within the Corporations Act 2001 (Cwth) provides for a very robust and structured platform for the operation of organisations and provides clarity in areas otherwise silent within the *Associations Incorporation Act*.

In relation to draft recommendation 6.1, the ASC would welcome the introduction of a Commonwealth incorporated associations legal structure for not-for-profits which would assist organisations, in particular those operating across state and territory boundaries. Given the nature of the sporting sector, this may provide an appropriate alternative (not previously available) for those organisations that do not wish to be companies limited by guarantee but wish to be incorporated at the Commonwealth level.

The ASC would welcome the additional flexibility proposed to enable not-for-profits to migrate from one form of legal entity to another and to migrate between jurisdictions and the continued reduction by state and territory governments of unnecessary compliance requirements for incorporated associations.

The ASC's most direct relationships are with national sporting organisations. However, the state and regional sporting associations and local clubs make up the

vast majority of the Australian sporting sector. The ASC sees that the establishment of a new legal form for small unincorporated associations as outlined in the draft report could assist in providing the most basic legal coverage for local sporting clubs, However, the introduction of an additional incorporation option could further complicate what is already a complex system. A number of states and territories have already implemented regulatory changes which address the need for proportionate treatment of small not-for-profit organisations. Also, if a system is implemented along similar lines to that in a number of the US states, without the requirement to register for this coverage, there may be a reduction in the visibility of small not-for-profit organisations within the sector.

The proposal that state/territory based incorporation of associations should be restricted to not-for-profits with income less than \$150,000 per annum would have significant implications for the sporting sector, particularly any small national sporting organisations which are still incorporated under state/territory incorporation acts as well as state and regional sporting organisations. It is difficult to provide more detailed comment of the implications of this proposal in the absence of more detailed information concerning the proposed new Commonwealth incorporated associations legal structure for not-for-profits. A more detailed consideration of the feasibility of this proposal would need to take into account both the benefits and regulatory requirements of both the current existing state incorporations acts and the proposed new legal structure.

Draft recommendation 6.2: Reducing unnecessary compliance burdens

The ASC supports the measures identified to promote confidence in the not-for-profit sector and reduce regulatory burdens, including that Australian governments endorse the Standard Chart of Accounts for reporting for not-for-profits in receipt of government grants or service contracts. This approach would have the advantage of increasing consistency and comparability in financial reporting requirements, though it will be important to ensure that a comprehensive education program and specialised support is provided to assist not-for profit organisations to implement this and other proposed changes..

Draft recommendation 6.4: Consolidating Commonwealth regulation and improving transparency

The ASC sees value in improving and consolidating regulatory oversight through the establishment of 'one stop shop' for Commonwealth regulation – a Registrar of Community and Charitable Purpose Organisation. Given the regulatory role of the Australian Securities and Investments Commission (ASIC) and its existing relationship with many larger not-for-profit organisations incorporated under the Corporations Act 2001 (Cwlth) as companies limited by guarantee, it is suggested that the national Registrar operate as a separate division of ASIC rather than as a

separate agency. This would also give additional prominence to the not-for-profit sector as the 'Third Sector' of Australian society.

Improving arrangements for more effective sector development – workforce, skills and access to capital

Draft recommendation 7.1 : Simplifying processes for and improving effectiveness of tax endorsement

In relation to draft recommendation 7.1, the 'recognition by Australian governments of 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 ASC sees this would benefit the sport sector by reducing the multiple levels of compliance and ensuring recognition of tax endorsement status across multiple jurisdictions.

Draft recommendation 10.1: Lowering costs for volunteers

In response to draft recommendation 10.1, that is, that Australian governments should explore the feasibility of establishing a system of 'Working with Vulnerable People Checks' similar to that proposed by the ACT, the ASC supports the concept of a national system of mutual recognition for assisting with the safety of children and vulnerable adults in Australia. Sport is a highly mobile activity and coaches, officials and associated service providers often travel with athletes who compete in inter-club, inter-state and national events or may attend training camps or other activities in various locations across Australia.

The ASC would therefore wish to see any new checking system recognised and accepted by all states and territories (irrespective of which state or territory the check was conducted/issued). To enable this, the inconsistencies and difficulties that currently exist with state and territory Working with Children Checks would need to be avoided. This would require state and territory governments to ensure consistency between each other in relation to:

- who must apply for a Working with Vulnerable People Check;
- definitions and terminology;
- what is checked (criminal records, offences, charges, disciplinary proceedings);
- validity period of the check (the ASC would support a period of three to four years);
- whether an ID card or certificate is provided (the ASC would support a carded ID system which is more portable than a certificate);
- any exemptions;

- costs (the ASC would support free checks for those in volunteer roles).

While the recommendation refers to portability of checks between organisations, this already occurs with all Working with Children Check systems, except for NSW. A key issue for the sport industry with a Working with Children Check system would be portability between states and territories for a designated time period. This would avoid people having to undergo more than one check if they frequently visit other states or if they live close to a state/territory border and frequently spend an equal amount of time in both states as part of the duties of their position.

Draft recommendation 10.4: Building governance capabilities

Within the Australian sporting system, it is the national sporting organisations which are the custodian of their particular sport from grassroots to elite sport. National sporting organisations are supported in this role by state and local sporting organisations who deliver the various levels of sport in their jurisdiction. The effective governance and management of sporting organisations, particularly at the national level has been a focus of activity at the ASC for a number of years. This has been paralleled at state and territory level by state and territory departments of sport and recreation.

Whilst there has been work done in this area in the sport sector in recent years, particularly with national and state sporting organisations, there is much still to be done. This is evident in one of the findings of the Independent Review of Sport that 'the capacity of Australia's sporting organisations to expand the delivery of sport and physical activity opportunities needs urgent attention'. (Australian Government 2009:101)

In recent years, the ASC has developed the *National Sporting Organisation Governance Principles of Best Practice* referred to earlier in this submission, supported a number of national sporting organisations to conduct governance reviews and implement their recommendations, and provided education programs to assist directors and senior managers of national sporting organisations to understand and meet their obligations. The most recent of these was a partnership with the Australian Institute of Company Directors to deliver a series of sport tailored workshops for directors and senior managers of national and state and territory sporting entities.

The ASC therefore supports draft recommendation 10.4, that Australian governments provide support to develop and promote training for not-for-profit management and boards in governance and related areas. Based on the ASC's experience in this area, it endorses the advantages of working with peak bodies and representatives of different areas of the not-for-profit sector to ensure that the training and associated educational material is tailored to be of maximum relevance to the not-for-profit organisations in the relevant part of the sector.

Strengthening relationships and driving change

The ASC recently hosted a series of national and regional forums with state and territory government agencies, national sporting organisations and other key partners in the Australian sporting system. Input from sport system partners at these workshops confirmed the need for a collaborative national sport system where governments support national sporting organisations, their state members and regional and local sporting associations and clubs to improve the organisational capacity and capability of sporting organisations.

Within the sporting sector, the ASC was identified as the key agency to provide leadership to the national sports system in an affiliative and collaborative style by brokering system interests and modelling the way; and supporting national sporting organisations and other system partners to deliver sport to all Australians by building capacity and development for sustainable outcomes. This approach, and initial steps along these lines were endorsed by the Independent Sport Panel in its review on sport in Australia.

Draft recommendation 13.1: Mechanisms for effective working relationships

The ASC supports the development of compacts between Australian governments and the not-for-profit sector, and in particular the National Compact which has a broader scope (including sport) than the various current state and territory compacts, and the requirement articulated in draft recommendation 13.1 for well documented plans of action and practical support to ensure tangible outcomes are realised.

Draft recommendation 13.2: Supporting effective relationships and driving change

Based on its experience in the sporting sector, the ASC believes that it is important to have a designated agency responsible for leading and driving the regulatory reform and related developments, and therefore supports the establishment of an Office for Not-For-Profit Sector Engagement within the Prime Minister's portfolio. Whilst centralising coordination and the leadership role within this Office, the ASC sees it as critical that this Office's mode of engagement includes a broad whole of sector approach involving representatives from all parts of the not-for-profit sector.

It is the ASC's experience that, despite the fact that sport accounts for some 33% of all Australian volunteers and 26.5% of all volunteer hours, the lack of a national representative or peak body for sporting organisations and related factors result in the sporting sector being excluded from key Government-industry consultation processes, with the result that many sporting organisations find it difficult to see the importance and relevance of these initiatives on the operation of their organisations. This is despite the fact that implementation of the proposed reforms would have a significant impact on the operations of sporting organisations at national, state and local levels.

Summary

The ASC welcomes the Productivity Commission's recognition of the sporting sector within the Not-for-Profit sector, and in particular its prominence in terms of the contribution of volunteers to the sector.

Issues raised in the Independent Review of Sport in Australia as well as the ASC's recent consultation process with sport system partners, including national sporting organisations and state departments of sport and recreation, are consistent with issues and trends articulated in the Productivity Commission's draft report.

The nature of sport is such that cross-jurisdictional issues impact heavily on sporting organisations. The ASC welcomes the recommendations aimed at clarifying expectations, ensuring consistency of definitions and further streamlining regulation impacting on the sport sector.

The Productivity Commission draft report details a broad range of reforms which, if implemented, would have a significant impact on sporting organisations at the national, state and local level.

The ASC believes that the prominence of the sport sector within the not-for-profit sector, both in terms of the significance of volunteering and the number of sporting organisations operating at the local community level, warrants greater involvement of the sport sector in discussions concerning issues which will directly impact the sector,

It is critical therefore, in ensuring that future engagement with the not-for-profit sector to further develop and implement the proposed strategies utilises a broad whole of sector approach involving representatives from all parts of the not-for-profit sector, including the sport sector.

References

Productivity Commission 2009, *Contribution of the Not-for-Profit Sector – Productivity Commission Draft Research Report*, October 2009

Australian Government 2009, *The Future of Sport in Australia – Australian Government Independent Sport Panel*, November 2009

Australian Sports Commission, *Governance Principles – A good practice guide for sporting organisations*