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MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT  
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MEMBER FOR GINNINDERRA

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Mr Robert Fitzgerald AM  
Presiding Commissioner  
Productivity Commission  
GPO Box 1428  
CANBERRA ACT 2601

Dear Mr Fitzgerald

Thank you for the opportunity to provide comment on the Draft Research Report on the Contribution of the Not-for-Profit Sector.

In acknowledging the significant contribution of the not-for-profit sector in the ACT community, the ACT Government welcomes the comprehensive nature of the Inquiry as a mechanism to inform future policy and identify better ways of working with the sector.

ACT Government work with the community sector is underpinned by a collaborative approach that has been instrumental in informing a responsive delivery of services, particularly for more marginalised groups. The ACT Government continues to build on this approach, in order to address the capability of the community sector, and to identify what support may be necessary to address the identified challenges.

This capability will be strengthened further when the ACT Government become the first Australian jurisdiction to implement a Portable Long Service Leave Scheme to assist child care and community sector organisations with workforce retention in 2010.

Thank you again for the opportunity to provide a Submission to the considerations of the Inquiry which is attached.

Yours sincerely

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Chief Minister

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## **ACT GOVERNMENT SUBMISSION TO PRODUCTIVITY COMMISSION REVIEW OF THE CONTRIBUTION OF THE NOT-FOR-PROFIT SECTOR**

ACT Government work with the community sector is underpinned by a collaborative approach that has been instrumental in informing a responsive delivery of services, particularly for more marginalised groups.

In the ACT, not-for-profit organisations (NFPs) play a significant role in developing a variety of sectors, including the arts, health and the environment. They greatly assist in progressing issues relating to young people, education, disability and access, and community creativity. In order for NFPs to continue to fulfil this important role, there are a number of key issues that need addressing as a priority: organisational sustainability; best practice governance; the importance of developing and maintaining diverse income streams; and forming partnerships and collaborations within and between sectors for mutual benefit.

Outlined below are a number of points providing an overview of current ACT Government approaches and their alignment with broad areas of reform outlined in the draft report.

In summary the ACT Government supports a streamlined approach across jurisdictions in order to minimise red tape and identify efficiencies in the support of services delivered by NFPs in a manner that recognises the joint interests of both the Australian and ACT Governments in funding these services.

The report would also be strengthened with some discussion of the costs and additional resources needed to implement the recommendations, especially those relating to data collection, the proposed increased access to capital funds, support for Business Support Services for non-government organisations and best practice approaches.

### *Building a better knowledge base (Recs 5.1 – 5.4)*

The ACT Government broadly supports the development of data collection or evaluation tools which can be used across Commonwealth and State/Territory programs, particularly where services are jointly funded or comparable.

### *Smarter regulation of the not-for-profit sector (Recs 6.1 – 6.4)*

Developing and implementing a new legal form for small, unincorporated associations is not supported. Smaller NFPs can currently register in the ACT as incorporated associations to provide very limited oversight of them. The reporting requirements and level of audit needs to be proportional to the size of the turnover of the NFP, as already exists in the ACT. It is not considered prudent to register NFPs with no other requirements of them other than to protect the individual members, with no commensurate responsibilities expected of them.

The concept of a National Registrar for Community and Charitable purpose organisations has merit; however there will still need to be regulation of the specific activities in which those organisations are engaged and the way in which they

organise themselves to carry out those activities. Without explicit streamlining and very good communication and cooperation between the proposed Registrar and other regulators, it is important that the proposed Registrar not add to the complexities and layers of existing regulatory burden. It is considered that further analysis be conducted to ensure that current regulatory oversight by states and territories is maintained. Clear interstate recognition may assist associations.

The advantage of a dual incorporated association system for NFPs with income greater or lesser than \$150,000 is that those NFPs only regulated by states and territories may become gradually disadvantaged and progressively become removed from national initiatives and developments

A significant number of NFPs have an annual turnover in excess of \$500,000 which may make the more rigorous regulatory requirements of the *Corporations Act 2001* more appropriate to protect the interests of the Government through the levels of accountability required of Directors. NFPs with a turnover in excess of \$1m should be compelled to register as limited companies, as should any that wish to operate across jurisdictions. Exceptions may be those that exist under their own legislation.

The Productivity Commission should investigate potential barriers to migrate between legal forms (eg stamp duties). This investigation should include the extent of the barrier and the potential impact of one-off exemptions to State and Territory budgets.

In the ACT charitable collections are governed by the *Charitable Collections Act 2003*. Consideration could be given to harmonised legislation for charitable collections. Any harmonised legislation should balance the administrative burden on charities and not for profit organisations with ensuring that collections are carried out in a way that protects the public.

The concept of one central location that holds all reporting is supported, including the need for a Standard Chart of Accounts. Beyond this, reporting is not only required on financial matters, but also on activities; outputs and increasingly, outcomes, in both quantitative and qualitative form. Therefore, standard financial reporting will address only the smaller proportion of reporting requirements for many NFPs.

The expansion of the Standard Business Reporting (SBR) initiative should occur subject to the successful completion of the current SBR workplan.

The statutory definition of charitable purposes in accordance with the recommendations of the 2001 Inquiry is supported in principle

ASIC already has an infrastructure and regulatory framework to manage NFPs, and approximately 7% of incorporated NFPs are already incorporated as companies limited by guarantee. While the current framework is geared to for profit entities, it is sensible that any national incorporation for NFPs is based on the existing incorporation legislation and practice, with some adjustment for the not for profit nature of activities. Any national incorporation should remain with ASIC.

The Not-for-Profit sub-group of the COAG Business Regulation and Competition Working Group was asked to develop a standard chart of accounts (SCOA). As such, the ACT is working with the other States and Territories to implement a SCOA.

*Realising funding opportunities for the sector (Recs 7.1 – 7.4)*

The Paper would be strengthened with some discussion of the budgetary impacts on the States, Territories and the not for profit sector to implement the recommendations. Specifically those relating to data collection, the proposed increased access to capital funds, support for Business Support Services for NFPs and best practice approaches should be examined.

The ACT supports in principle the recognition at the Commonwealth level of NFPs, and exploring the scope for a single national application processes. Further work should be undertaken in this area once the Commonwealth Government review of the Australian Tax System is completed.

*Facilitating Social Innovation and Sector Development (Recs 9.1 – 9.3)*

The ACT Government will become the first Australian jurisdiction to implement a Portable Long Service Leave Scheme to assist child care and community sector organisations with workforce retention.

The new Portable Long Service Leave Scheme will support the ACT's community sector by protecting the basic entitlement of each worker to take long service leave, even though they may have worked for more than one community organisation. This already occurs in the public sector where entitlements accrue by working across several government agencies.

This will strengthen the capacity and sustainability of the sector, and will also assist in developing more career options for community sector workers by facilitating movement between organisations and providing more variety in work with greater prospects for promotion. The Portable Long Service Leave Scheme will be operational from 1 July 2010.

The ACT Government through its Community Sector Funding Policy is committed to providing professional development/training opportunities for government and community sector funding managers. Training in "Raising the Standard" (which includes quality improvement and evaluation tools) is provided through ACTCOSS. Training packages are developed in consultation with community sector organisations and are reviewed annually.

The ACT has funded research projects to develop potential models for shared services for community organisations in the ACT. The ACT is also developing the establishment of regional hubs to co-locate similar organisations.

*Sustaining the not-for-profit workforce (Recs 10.1 - 10.4)*

The ACT Government currently includes indexation in its payments to all community sector organisations based on a combination of Consumer Price Index and Wage Cost Index. This is based on the Western Australian model.

The ACT Government is currently undertaking a Review of Industrial Arrangements for the ACT Community Sector to assess wages and conditions for community sector employees.

A mapping exercise of all training currently available to the ACT community sector is also being undertaken.

*Improving the effectiveness of direct government funding (Recs 11.1 – 11.4)*

The ACT Government supports an approach where Australian governments work with NFPs to assist them provide social services, rather than fully funding those services.

The ACT Government is undertaking a review of community sector contracts to assess whether staff wages and conditions are adequate and to develop policy options to improve service delivery in the ACT. The ACT Government Service Funding Agreement template allows for the joint review of the funding and/or outputs and services if the cost of services increases due to circumstances beyond the organisation's control (including government policy).

Results based accountability training for service funded organisations is being progressively implemented.

*Removing impediments to better value government funded services (Recs 12.1 – 12.7)*

The ACT Government works closely with service providers on the terms of the agreements, which include processes for periodic reviews. While service agreements have historically tended to be three years, plus scope for extensions, the Territory is interested in exploring the use of longer-term service agreements, where this is likely to result in better value for money, appropriate risk management and outcomes.

Risk management plays an important role in all ACT Government procurements, regardless of value. Procuring entities are recommended to prepare risk management plans for all procurements with an estimated total value of \$25,000 or more. The detail of the plan will depend on the relative risk of the project.

The ACT Government works closely with service providers on the development of risk management frameworks. Service Funding network managers and service providers meet periodically to discuss risk management, including discussions with the ACT Government insurer, ACTIA. Annual reviews of agreements include reviews of risk management.

Service funding agreement templates are in use across ACT Government. The ACT Government seeks service provider input on the terms of these agreements.

Prequalification in the Territory generally applies at present to the construction industry, although some services (for example, school cleaners) are also prequalified.

Prequalification is a method of attracting and assessing potential service providers where such a scheme would be seen to implement practices across the not for profit sector that would minimise risks to both the Territory and service providers with

regard to poor performance and financial failure; and encourage efficiencies across the sector to make it easier to do business with the government.