



CENTRE FOR SOCIAL IMPACT

Submission to the Productivity Commission's
Draft Research Report (released 14 October 2009)
on the contribution of the not-for-profit sector

NO. 1 : BUILDING THE CAPACITY OF COMMUNITY ORGANISATIONS THROUGH BETTER REGULATION

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The following comments have been developed by members of the Centre for Social Impact's Advisory Council – Greg Hutchinson, David Gonski, Toby Hall and Sue-Anne Wallace as well as CSI's head, Macquarie Group Foundation Professor Peter Shergold.

Background

The Productivity Commission draft report clearly articulates the key role that the not-for-profit sector plays in our community. It provides essential services to individuals in most acute need and promotes causes of the greatest importance within our society. The not-for-profit sector provides a large part of our community capacity, employing almost 900,000 and engaging a further 4.6 million volunteers. In aggregate the sector accounts for 4.1% of GDP (5.5% with volunteering) and has increased 60% in real terms in the seven years to 2006/07. The role of the not-for-profit sector is growing in scale and complexity driven in part by the Government outsourcing of community services, strong growth in private philanthropy, corporate responsibility and social entrepreneurship.

The Case for Change

The Productivity Commission report makes a powerful argument for change in the regulatory and support framework for Australia's not-for-profit sector. CSI fully supports this case for change.

Australia's current system of not-for-profit sector regulation evolved over many years with different arms of government applying or modifying elements of for-profit corporate regulation. This has left us with a system that neither builds the capacity of the not-for-profit sector nor effectively regulates it. In administrative and legislative terms, the structural framework is a mess, imposing significant dead weight costs on the third sector.

As the Productivity Commission has noted, there are three major shortcomings to the present system:

- **Complexity:** bodies currently involved in regulating the sector include ATO, ASIC and a variety of departments in each state and territory. "Excessive or inappropriate regulation, however, inhibits NFP endeavour, creates a barrier to efficient service provision and reduces community benefits." (Draft Report p 6.1)
- **Scalability:** The problems are particularly acute for larger and/or national not-for-profits, the 10% of 'economically significant' not-for-profits that account for 97.5% of sector revenue. "The current regulatory framework for NFPs is characterised by uncoordinated regulatory regimes at both the Commonwealth and state/territory levels. This imposes a variety of reporting requirements and adds complexity and costs, especially for organisations operating in more than one jurisdiction." (Draft Report p 6.1)

- Integrity: there is no standard format for reporting and no way of driving consistency without initiatives such as a standard chart of accounts. Unlike the UK, US or NZ, Australia lacks ... “A clear and consistent accountability framework (that) would help to maintain and enhance public confidence in the integrity of charity and provide scope to develop a common framework of reporting requirements ...” (Charities Definition Enquiry, June 2001).

Proposed Way Forward

These are fundamental deficiencies in the existing not-for-profit regulatory and support framework. They will not be solved by modifying the existing system in a piecemeal fashion. CSI believes that a bolder approach is necessary.

The Productivity Commission report outlines a three-part, purpose-built approach. CSI strongly supports the principles that underlay this approach but would recommend significant modifications that would both strengthen and simplify the proposed framework.

The core requirement is to build a framework that will go beyond regulation to become a positive force in building the capacity of the third sector to serve our community. As the draft report states, the regulation of not-for-profit organisations “can help to build and maintain trust in the sector, facilitate the establishment and operation of organisations with community purpose, and promote higher standards of service care and public safety” (Draft Report p 6.1).

The Productivity Commission draft report suggests establishing two new organisations.

First, the proposed Registrar of Community and Charitable Purpose Organisations (Draft Report recommendation 6.4) has a charter that provides the authority to:

- register and regulate a new Commonwealth Incorporated Associations regime, Companies Limited by Guarantee, and Indigenous Corporations;
- register and endorse not-for-profits for all Commonwealth tax concessions;
- potentially register not-for-profits for cross-jurisdictional fundraising;
- establish a single portal for the lodgement, maintenance and access to public record corporate and financial information, proportionate to size and risk. Such a facility could be used as a single place for corporate and basic financial ‘health checks’ for government contracting purposes and/or by prospective donors;
- investigate complaints; and
- provide education and guidance on governance issues.

Second, the proposed Centre for Community Service Effectiveness (Draft Report recommendation 5.4) has a charter that provides the authority to:

- promote ‘best practice’ approaches to evaluation, with an initial focus on evaluation of government funded community services;

- provide a publicly available portal containing evaluations and related information provided by not-for-profit organisations and government agencies;
- undertake and publish meta analysis of evaluation results; and
- provide training materials on good evaluation practice.

Recommendations

CSI recommends that the Productivity Commission’s proposed approach to structuring these parts of the framework be modified in the following six ways.

1. *The proposed Registrar and Centre for Community Service Effectiveness - should be merged into a single entity – a Charities Commission - that would have the dual roles of regulator and builder of the capacity of the sector.* These two roles are complementary and mutually reinforcing. CSI’s ambition is to see established a regulator that can build capacity in the sector and a capacity builder that has the imprimatur of a regulator to encourage change.

CSI believes that the charter of this combined organisation should mirror the broad framework of a Charities Commission as they operate in overseas countries. CSI sees benefit in a charter which brings together third sector regulation, compliance, accountability and investigation (on the one hand) with development, encouragement, facilitation and promotion of best practices in not-for-profit organisations (on the other).

This is the case elsewhere in the world. The Charity Commission in the UK, for example, defines its four-fold mission as ensuring legal compliance; enhancing accountability; encouraging effectiveness and impact; and promoting the public interest in charity.

Similarly, the Charities Commission in New Zealand “... registers and monitors charities in accordance with the *Charities Act 2005* ... (but also) provides support and education to the charitable sector on good governance and management.”

The Commissioner of Charities in Singapore has a similar ambit. It seeks to maintain public confidence through promoting effective use of charitable resources; encouraging development of better methods of administration; giving charity trustees information on any matter affecting the charity; and investigating and checking abuses.

CSI believes that an Australian Commission should have similarly broad powers.

2. *The Charities Commission’s regulatory framework should extend to all not-for-profit organisations. It is vital to bring the third sector within a consistent national basis of oversight.* There exists a rare opportunity to eliminate the complexity associated with multiple regulatory bodies and inconsistent legislation at the Commonwealth, State and Territory levels.

Within this national framework we support the Productivity Commission approach of tailoring reporting requirements to the scale, complexity and reliance on government funding of not-for-profit organisations in such a manner as to apply the principle of ‘report once, use often’.

CSI also notes that the recent Senate Economic Committee report has proposed a national fundraising act. It is generally recognised that the significant inconsistencies in fundraising legislation across jurisdictions are inefficient and add to the administrative burden on not-for-profit organisations which seek donations in more than one state. *CSI recommends the development of a national approach to fundraising licences administered through the Charities Commission. Rather than harmonising fundraising legislation, which is likely to prove complex and slow, it may be more effective to introduce model legislation to be recognised by each state jurisdiction.*

3. *The 'Service Effectiveness' part of the combined entity be progressively expanded to promote 'best practice' across the full range of operational, governance and strategic activities of not-for-profit organisations.* CSI would like to see a Charities Commission that will have a unique overview of the sector, the data to identify sources of good practice and the ability to encourage collaborative adoption and adaptation of these innovative approaches.
4. *Much of the analysis of the not-for-profit sector and development of best practices should be outsourced to non-government organisations.* This can be done by utilising existing research and data collection capacity in organisations such as the Centre for Social Impact, the Australian Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology, Philanthropy Australia, Pro Bono Australia and others.

CSI strongly supports the funding of a Third Sector Knowledge Centre to develop analytical capacity similar to organisations (such as Guidestar) that operate in other countries. This approach would utilise existing skills and capacity, allowing the combined capacity of multiple non-government organisations to be tapped in a collaborative manner rather than relying only on the capacity of government agencies.

The proposed Third Sector Knowledge Centre would be well placed to work closely with ABS on an Information Development Plan (Draft Report recommendation 5.1).

5. CSI also notes that the **Productivity** 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” and “the appropriate reporting thresholds and requirements under the Registrar’s proposed functions.”

CSI strongly recommends that the merged and expanded regulator (a Charities Commission) should be an independent arm of government, along the lines of the Charity Commission in the United Kingdom. As such we believe that the regulator should not be part of ASIC or Treasury, strengthening its capacity both to regulate and to build the capacity of the not-for-profit sector. At the same time CSI recognises that there are certain back-office administrative activities currently performed by ASIC that will be taken on by

the new regulator. Where it is efficient to do so, these activities might be subcontracted back to ASIC in a manner that does not undermine the Commission's independence.

6. The third part of the institutional structure proposed by the Productivity Commission is an Office for Not-For-Profit Sector Engagement to *"bring these reforms to fruition and to provide a home within the Australian Government to progress ongoing sector and governmental reform"* (Draft Report recommendation 13.2). Its proposed charter includes the capacity to:
 - give much needed focus to improving the sector's engagement with the Government, and business, and stimulate sector-wide policy development;
 - implement sector regulatory and other reform and the implementation of the Government's proposed compact with the not-for-profit sector;
 - 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; and
 - facilitate stronger community and business collaboration.

CSI strongly supports the establishment of such an Office and its location in a central agency of government such as the Department of the Prime Minister and Cabinet or the Department of Finance. A whole of government approach is particularly critical as the Office will need to be effective across a range of services as diverse as health, training, employment, immigration settlement, environment, aging and disability in which government agencies have service agreements with not-for-profit organisations.

It is CSI's strong view that a key role of the proposed Office must be to oversight genuinely collaborative relationships between the Australian Government, the Australian Public Service and community organisations in delivering public benefit. It needs to tackle the costs of regulatory impost, compliance burden and implicit political pressure too often imposed on not-for-profit organisations receiving public funding for the delivery of government services.

For that reason CSI believes that the Office needs to have a joint advisory committee with equal numbers of agency heads and not-for-profit leaders, with an independent chairperson. A public service agency alone is insufficient.

CSI welcomes the opportunity to further discuss this submission with the Productivity Commission.