

## **1. Introduction**

The Australian Council for International Development welcomes the recommendations of the inquiry into the contribution of the not-for-profit sector. With some exceptions, the Commission's report to Government agree with those recommendations made by the Council in its submission of June 12<sup>th</sup>, 2009.

ACFID has contributed substantial resources and energy to previous Government inquiries into the not-for-profit (NFP) sector including the Industry Commission Inquiry of 1995, the 2001 Inquiry into the Definition of Charities and Related Organisations, the 2008 Senate Economics Inquiry into Disclosure Regimes for Charities and Not-For-Profit Organisations and the 2009 Review of Australia's Future Tax System. Regrettably, little has resulted from these inquiries. As such, we strongly endorse most of the recommendations of the Commission. We urge the Government to implement them in consultation with the sector

Many of this Commission's recommendations add weight to those of the Senate Economics Committee Inquiry into Disclosure Regimes for Charities and Not-for-Profit Organisations (2008). These included:

- A single independent national regulator for NFP organisations;
- That a national fundraising act be developed which also regulates activities such as internet fundraising;
- That a standard chart of accounts be implemented;
- That a new disclosure regimen be developed which contains elements of narrative and numeric reporting;
- That the national regulator investigate a website that publishes information on the aims and activities of all NFP organisations.

The international aid and development sector seeks a commitment from the Government to implement the recommendations stemming from the Productivity Commission's inquiry. The sector itself and the entire Australian community will enjoy comprehensive and long lasting benefits from an improvement in both the regulatory and delivery environments for the NFP sector.

## **2. The exceptions**

### **FBT exemption**

The Commission's report makes much of the issue of competitive neutrality and the effects of the FBT exemption currently enjoyed by those organisations that receive PBI status. The report takes for granted many assumptions that FBT causes a skewing of the market.

It is important to understand the significance of the exemption to the NFP sector. Salary packaging through the provision of fringe benefits is considered highly crucial to the successful recruitment and retention of quality staff. This enables NFPs to compete against the often higher incomes that are offered by government and private organisations. Without the FBT exemption, many NFPs would face acute financial difficulty, would have difficulty retaining staff and would ultimately need to reduce programme activity or increase reliance on government funding.

The aid and development sector does not rely substantially on, and is not maintained primarily by, direct government funding to deliver its programs. In fact, some ACFID members receive no direct government funding at all. The Australian public donates 80% of the total funds raised by agencies and includes funds raised from donations, fundraisers, bequests and corporate donations.

Equating the nett effect of the exemption, on the part of the organisation, into the salary package of its employee, it saves the NFP organisation approximately \$10,000. That is, without the exemption the NFP would have to pay an extra \$10,000 to each of its full time employees. The membership of ACFID has over 1,400 such employees. Without the FBT exemption the international development sector alone would need to make up a shortfall of over \$14 million for wages. The international NGOs are by no means the biggest of the NFP sector.

The Commission's report assumes a certain symmetry whereby it exhorts the Government to give service providers full funding for the service obligations that they undertake on behalf of Government, while using arguments of anti-neutrality to set up the forthcoming Henry report to abolish the FBT exemption.

The Commission neglects that the aid and development sector is not a service provider on behalf of governments. Full funding by government would not help this sector and yet removal of the FBT exemption would crush it. Government would allow the gutting of a sector that the Australian public directly supports to the tune of a billion dollars per year.

### **Competitive neutrality**

The argument against retention of the FBT exemption is based on the principle of competitive neutrality (CN). The Commission's report bases its perception of CN on the situation of NFP and for-profit hospitals. The gross and unsupported assumption is that as for-profit hospitals are not exempt from FBT that they are losing out to NFP hospitals by not being able to retain their staff.

There is not evidence cited of a flight of staff from for-profit hospitals to the NFP sector and from the assumption that they are, the extrapolation occurs that the entire NFP sector is somehow anti-competitive. This fallacious argument runs contrary to the recommendations of the Commission, discussed later (10.2 & 10.3), that the staff of the NFP sector are in short supply and in need of assistance for greater professionalisation.

### **3. The Commission's recommendations by themes**

#### **Comprehension of the Not-for-Profit sector**

Draft recommendations 5.1 and 5.2

Measurement of the NFP sector through data collection is of great importance, appreciation of the sector's impact is paramount. ACFID is heartened by any attempt by the Government to comprehend the NFP sector. The enormity of the NFP sector at home and abroad and its nature as the backbone that enriches the lives of the entire community is staggering.

ACFID research shows that 1.7 million people were involved in supporting non-government development organisations. That Australians donated over \$800 million (2008) to the international development sector alone is testament to the depth and breadth of the impact of giving.

The sector should be understood, however, in terms greater than just that of a service delivery mechanism for governments. The government can be informed by simple metrics such as: more children being educated, fewer infants and mothers dying or the number of people being lifted out of poverty. This sector, though, also seeks less tangible impacts such as behavioural and attitudinal changes that may take years and will last a lifetime.

The effects of the beneficence stemming from the NFP sector permeate the lives of all Australians: both the recipients and those who donate their time and money.

#### **Transparency**

Draft recommendations 5.3 and 5.4

The membership of ACFID warmly welcomes any moves to provide greater transparency of the NFP sector. Public disclosure is one of the touchstones of the decade old ACFID Code of Conduct, compliance with which is conditional for membership of this peak body.

The Code is a voluntary, self-regulatory industry vehicle for the international aid and development sector. It represents the commitment of signatories to conduct their activities with integrity and in an accountable and transparent manner. The Code defines standards of ethics, organisational integrity, governance, communications with the public, financial control and reporting, and personnel management that signatories to the Code are required to comply with. Importantly, the Code identifies mechanisms to ensure accountability in NGDO use of public monies.

The members of ACFID have made great progress towards the development of a standard Chart of Accounts. We would be pleased to work with Australian governments and other peak bodies to further develop a Chart of Accounts that will provide to the public a transparency and consistency of financial information.

Our membership appreciates that the NFP sector is underpinned by the trust of the public. Any initiatives that uphold and enhance that trust are welcomed by ACFID.

## **Legal simplification**

Draft recommendations 6.1 to 9.3

When recent decades have seen sweeping changes in the simplification of legal regulation of business and industry, Australia has been ill served by the continuing complexity of the regulation of the NFP sector. Members of the sector have always grappled with the difficulties of registration in different State jurisdictions and Commonwealth endorsements. We do not necessarily need less regulation but better regulation. ACFID wholeheartedly supports those recommendations, in particular 6.1 to 7.2 that it has long advocated.

NFP organisations are beholden to the Government at a number of crossroads:

- NFPs may seek registration with Government authorities in order for them to exist;
- They may seek to have PBI or DGR status;
- They may seek compliance with various instruments in order that they can apply for funding for their own activities;
- They may tender to the Government in order that they can provide government services, and
- They are obliged to report as any other incorporated entity would.

We believe that regulatory functions / endorsements should reside in departments different from those that might engage NFP organisations to deliver the Government's social obligations. No better service to Australians could be provided than for the ATO to be relieved of its conflict between deciding matters of eligibility for tax deductibility and having to administer the collection of and compliance with taxation law. The ATO was, for the want of any other body being responsible, burdened with making policy rather than enforcement of compliance.

We also encourage the Commission to recognise the valuable role that ACFID's Code of Conduct has had in providing a voluntary, self-regulatory regime for international non-government organizations which has facilitated high standards in the sector for the last eleven years. This was a recommendation by the Senate Standing Committee on Economics report into charities in 2008. The Code represents a high level of knowledge and commitment to best practice that would be difficult and cumbersome for government to replicate.

## **The cost of service delivery**

Draft recommendations 10.1 to 11.4

We are pleased to endorse these recommendations of the Commission to the Government. A proper level of funding for the services provided allows NFP organisations to provide an appropriate level of resources for their activities in order to optimise the outcomes. This allows the organisation to better plan for the future and provides the Government with certainty over the delivery of its social obligations.

Just as our sector welcomes transparency of its fund raising and activities, so too do we welcome transparency by government of its rationale for funding services.

Adoption of this recommendation from the Commission would allow wider and better informed public debate as to the role and nature of NGOs in social services.

Employees of the NFP sector reflect a high proportion of part time and volunteer workers. Overseas aid organisations alone had over 20,000 volunteers in 2008. Typically people working in the sector earn wages lower than those comparable to the for-profit sector. The NFP sector finds it difficult to recruit highly skilled senior people into its workforce, which over time deprives it of skills at a senior level.

With proper funding from Government for services and a heightened professionalism, the NFP sector can draw from a greater pool of talent. Greater training opportunities for employees of NFP organisations provides those employees with recognition of their skills and enhanced opportunities for mobility across different sectors of the economy. Adoption of these recommendations would provide employees of the NFP sector with a more equitable market place for their skills and for the sector to import staff with experience of the commercial and government sectors.

### **Better value, better outcomes**

Draft recommendations 12.1 to 12.6

When a government provides a service directly, it is forced to carry the full cost of labour, capital and a portion of its own administration and infrastructure burden. When a government engages a NFP organisation to deliver a service, it is able to reap the benefits of not just the expertise of another organisation but to do so at marginal cost. In this way it obtains a free ride from the infrastructure developed by others with only minimal administration costs of its own.

The NFP sector would welcome an approach by the Government that properly values the commitment made to service delivery. Having service delivery fashioned around an appropriate model with contracts for a proper duration will enable the NFP organisation to provide a better service through certainty of supply and superior financial planning.

A significant benefit to government will also accrue from protocols for managing risk. Too often government officials are forced to micromanage service delivery contracts from a benchmark set at the lowest common denominator. When circumstances warrant it, this will alleviate the service provider of onerous compliance costs – thus giving more value for money for public expenditure.

The simple facility of a contract having an option to extend will allow an occurrence of service delivery to be perpetuated when both parties are happy with the synergies that they have realised and the service recipient is well provided for.

### **Streamlining tendering**

Draft recommendation 12.7

We strongly support the use of a system of prequalification for suppliers. Though onerous in the first instance, once on a panel, this would put large and small organisations on an equal footing. Such a system has much to commend it and provides a more equitable means of competing for government resources.

While we would welcome the establishment of such a system, experience across different sectors of the community identifies cause for future concern. In other areas of the economy, panels established in just such a way become distorted in their processes. Within government departments pressures for accountability and control work to force the members of panels, though already prequalified, to undertake the entire processes again on each occasion that a response is sought to a tender or expression of interest. Any move toward such a system needs to be closely scrutinised by those in charge of the process in future years.

### **A working relationship**

#### Draft recommendation 13.1

In 2008, the Government articulated a policy commitment to expand and enhance the pattern of its engagement with the Australian NGDO sector. The Parliamentary Secretary for Development Assistance established a Partnership Agreement with ACFID, which was signed in March 2009. The Partnership Agreement identifies, as shared principles, the promotion of international best practice, development effectiveness, reducing poverty, building capacity, sustainability, participation and good governance.

The Partnership Agreement is not tied to funding arrangements with ACFID or with other NGDOs. We strongly advocate the creation of such compacts between the Government and elements of the sector as an approach to an effective working relationship.

### **Supportive engagement**

#### Draft recommendation 13.2

We welcome the implementation of the Commission's proposals by having them shepherded through to fruition by a hand at the highest level.