

Submission to the Productivity Commission

Comment on the Draft Research Report

Contribution of the Not-for-Profit Sector

Victorian Government

December 2009

List of acronyms

AAV	Aboriginal Affairs Victoria
ACE	Adult Community Education
ACFE Board	Victorian Adult Community and Further Education Board
AIA	<i>Associations Incorporation Act 1981 (Vic)</i>
ASIC	Australian Securities and Investments Commission
ATO	Australian Tax Office
CALD	Cultural and Linguistically Diverse
CAV	Consumer Affairs Victoria
CNL	Cooperatives National Law
COAG	Council of Australian Governments
DEECD	Victorian Department of Education and Early Childhood Development
DH	Victorian Department of Health
DHS	Victorian Department of Human Services
DIIRD	Victorian Department of Industry, Innovation and Regional Development
DOJ	Victorian Department of Justice
DPC	Victorian Department of Premier and Cabinet
DPCD	Victorian Department of Planning and Community Development
HSPIC	Human Services Partnership Implementation Committee
IDP	Information Development Plan
NFP	Not-for-Profit
NGO	Non-government organisation
OCS	Victorian Office for the Community Sector

OGR	Victorian Office of Gaming and Racing
ORIC	Office of the Registrar of Indigenous Corporations
PILCH	Public Interest Law Clearance House
SBV	Small Business Victoria
SSA	State Services Authority
VCOSS	Victorian Council of Social Services
VET	vocational education and training
VICSES	Victorian State Emergency Services

List of abbreviations

<i>SCOP Report</i>	<i>The Report from the Victorian Steering Committee of the Stronger Community Organisations Project</i> (November 2007)
<i>SSA Review</i>	<i>Review of Not-for-Profit Regulation</i> conducted by the State Services Authority (September 2007)
<i>Victorian Government's Action Plan</i>	<i>Victorian Government's Action Plan: Strengthening Community Organisations</i> (April 2008)

1. Introduction

The Victorian Government welcomes the opportunity to provide comments on the Productivity Commission's Draft Research Report, *Contribution of the Not-for-Profit Sector* (the "Draft Report").

The comments in this submission build on the Victorian Government's August 2009 submission on the Issues Paper released by the Productivity Commission as part of its Study into the Contribution of the Not-for-Profit (NFP) sector to Australian society.

The Victorian Government is supportive of the general direction of the Draft Report as set out in the Commission's statement in the Overview of the Draft Report. It proposes an "integrated approach" that builds "on the existing systems and reform programs ... to reduce duplication, improve clarity, lower unnecessary compliance burdens, increase worthwhile transparency and build the capacities of the sector to improve its efficiency and effectiveness." (p xxxvii)

The Victorian Government supports in principle most of the draft recommendations in the Draft Report. Many of the issues discussed in the Commission's draft recommendations are already being addressed by Victoria as a result of the implementation of the *Victorian Government's Action Plan: Strengthening Community Organisations* (April 2008).

This *Action Plan* was developed by the Victorian Government following extensive consultations with NFP and community organisations, philanthropic organisations and academia as part of two reviews:

- the *Report from the Victorian Steering Committee of the Stronger Community Organisations Project*, November 2007 (*SCOP Report*) (see <http://www.dpcd.vic.gov.au/communitysector>); and
- the *Review of Not-for-Profit Regulation* conducted by the State Services Authority, September 2007 (*SSA Review*) (see <http://www.dpcd.vic.gov.au/communitysector>).

As explained in the Victorian Government June 2009 submission, the *Victorian Government's Action Plan* combines the findings of the *SCOP Report* and the *SSA Review* into a coherent plan for strengthening NFP and community organisations.

The objectives of the *Action Plan* are twofold:

- to simplify and streamline the Victorian Government's interactions with NFP and community organisations; and
- to enable NFP and community organisations to invest in their own capabilities and long-term sustainability.

To achieve these objectives, the Victorian Government has developed a set of 25 key actions that are detailed in the *Victorian Government's Action Plan* and which can broadly be grouped under five themes:

- reducing regulatory burden and streamlining interaction with government (*Theme 1*);
- building the capacity of community organisations (*Theme 2*);

- supporting innovation and growth (*Theme 3*);
- enhancing the role of NFP organisations (*Theme 4*); and
- recognising community organisations and coordinating efforts across government (*Theme 5*).

The Victorian Office for the Community Sector (OCS) was established by the Victorian Department of Planning and Community Development (DPCD) in 2008 to lead the coordination and implementation of policy priorities affecting the NFP sector across the Victorian Government.

To assist the Commission in developing its final report and recommendations, this submission provides comment on the draft recommendations that are concerned with matters within the state jurisdiction or that impact on state areas of responsibility. Where relevant, it links the *Victorian Government's Action Plan* to recommendations in the Draft Report and includes case studies that provide more detail on matters discussed in the Commission's draft recommendations.

The Victorian Government would welcome the opportunity to discuss any of the comments set out below with the Commission.

2. Victorian Government Comments on the Draft Recommendations

BUILDING A BETTER KNOWLEDGE BASE

Measuring the contribution of the sector in the future

DRAFT RECOMMENDATION 5.1

The Australian Government should initiate an Information Development Plan (IDP) for the not-for-profit sector. Given its central role in providing data on the sector, and its legislated responsibility for statistical coordination, the Australian Bureau of Statistics should be given responsibility for formulating the IDP, consulting other key stakeholders as appropriate.

Among the issues the IDP should address are:

- the appropriate frequency for publication of the satellite account on the sector and the scope for expanding measurement in the satellite account beyond economically significant entities*
- the scope to improve administrative and other longitudinal data sets to support analysis of net impacts of sector activities*
- the feasibility of obtaining accurate estimates of the number of unincorporated not-for-profit organisations in a cost-effective manner.*

2.1 Victorian Government comment on Draft Recommendation 5.1

The Victorian Government supports in principle the development of an Information Development Plan (IDP) for the NFP sector. Information on the scope and scale of the NFP sector would be of assistance across government for long-term planning and budget purposes.

In developing an IDP, the Victorian Government notes that:

- data should only be collected for a specific purpose, where the benefits outweigh the costs of collection for both the agency that performs the collection as well as NFP organisations who would have to provide the information;
- analysis regimes for longitudinal and comparative data sets in the IDP should recognise that the NFP contribution (and impacts) in some sectors is cyclical depending on public policy settings and the demands for services;
- a further statistical breakdown of the culture and recreation sector to identify and measure the contribution of the arts and culture sub-sector should be investigated¹; and
- consideration should be given to the potential impacts of increased data gathering (both scope and frequency). Given it is the intention of governments to reduce the burden of regulation and streamline reporting, the additional data gathering should be integrated with other forms of reporting to reduce the

¹ As reported in *Australian National Accounts: Non-Profit Institutions Satellite Accounts 2006-07*, not-for-profit organisations in the culture and recreation sector made the second largest contribution to GDP (after Education and Research), generated second highest level of income, and had the largest volunteer input.

impact on NFP organisations. It should be recognised that there may be a need for additional resourcing to meet the data obligations of the NFP sector.

Improving comparability and usefulness of information collected

DRAFT RECOMMENDATION 5.2

Australian governments should endorse a common framework for measuring the contribution of the not-for-profit sector. Having regard to the diversity of the sector's activities and structures, measurement using this framework should embody the principles of proportionality, transparency, robustness, flexibility, and applicability. To the extent possible, evaluations should be used to help identify the contributions, especially in respect of the impacts on individuals and the community, and inform the development of data collections.

2.2 Victorian Government comment on Draft Recommendation 5.2

The Victorian Government supports the development of a common framework for measuring the contribution of the NFP sector.

Many NFP organisations operate in a number of states and territories and there is merit in developing a common framework. A common framework would make it easier to aggregate data across jurisdictions to develop an Australia-wide measure, and to allow comparison of jurisdictional contributions. This information could inform both government policy making and NFP operations.

At present, obtaining timely and accurate information on the NFP sector is difficult. The development of a common framework for measuring the contribution of the NFP sector would provide a sound basis for assessing the sector's contribution. The common framework should consider how both government funding and fundraising contribute to the sector, and its capacity to deliver services.

In developing a common framework, the Victorian Government notes that:

- consideration would need be given to the diversity of ways in which the NFP sector contributes. 'Whole of NFP sector' comparisons may not always be helpful to government as the diversity of the NFP sector may mean that identifiably common measurement elements are limited to the most generic level of evaluation;
- a 'NFP specific' evaluation and reporting framework is unlikely to fully replace evaluations driven by the service delivery/industry sector in which the NFP organisation operates; and
- the internet is increasingly used as a mechanism to provide access to services and information by community organisations. However, there are complex issues in measuring website access. There is a need for information and training on online and freely available measurement tools (such as Google Analytics). The provision of clear guidelines on how to report website access consistently across the sector is also needed. This could be a task for the

proposed Centre for Community Service Effectiveness (Draft Recommendation 5.4).

Case study – Arts Victoria

In the cultural sector, at all levels of government, there has been considerable interest in developing comparable data for measuring the impact of cultural organisations and programs. Arts Victoria has had significant success in developing standard reporting systems for government-funded NFP cultural organisations.

At the national level, Arts Victoria is also actively involved in initiatives to establish time series, comprehensive, standardised data through the work of the Cultural Indicators Project and the Statistics Working Group of the Cultural Ministers Council.

Any measurement framework for NFP organisations should have the capacity to reflect the value and contribution of arts organisations², including:

- supporting cultural diversity and promoting a democratic culture by providing a platform for social debate and creative engagement of diverse groups and their views, including hard to reach groups such as Cultural and Linguistically Diverse (CALD) and youth;
- increasing access to the arts through diverse, affordable and geographically dispersed arts activities; and
- promoting skills development and career paths.

DRAFT RECOMMENDATION 5.3

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’.*

2.3 Victorian Government comment on Draft Recommendation 5.3

The Victorian Government supports initiatives aimed at minimising compliance costs and maximising the value of data collected.

The first theme of the *Victorian Government’s Action Plan* is “reducing regulatory burden and streamlining interaction with government”. As part of this, the Victorian

² “Small Arts Organisations Research and Evaluation”, 2007, Deloitte.

Government is progressing a second round of reforms to the *Associations Incorporation Act 1981* (AIA) to further reform reporting, audit requirements, trading rules and model rules. A process has been established to consult and work with the NFP sector. These reforms are elaborated in response to Draft Recommendation 6.1 below.

A best practice guide for grant making to be used across the Victorian Government is being developed by DPCD. This guide will be provided as an on-line resource, and will follow the grant lifecycle in detail. It will give an overview of best practice principles for grant making, outline how to build a case for investment and detail the steps recommended for designing and implementing a best practice grant program. The guide will establish a standardised approach to administration elements – such as funding agreement type, scheduling payments and project monitoring – that is proportional to risk.

A Standard Chart of Accounts is being developed by the OCS based on the Queensland University of Technology model and in line with those used in Queensland, Western Australia and New South Wales. A Standard Chart of Accounts will reduce reporting duplication for NFP organisations by removing inconsistencies in the information required for grant acquittals. The Victorian Government agrees that it should be standard practice that all information gathered through performance evaluation be returned to service providers for appropriate learning to take place. This would also allow for sector benchmarking, and should include both positive and negative feedback.

The Victorian Government supports the principle of ‘report once, use often’. The government is taking steps to action that principle by introducing a Community Organisations Recognition Process and by eliminating duplicate financial reports as part of the Better Grant Making Action Plan.

For example, the 2009-12 agreements by the Victorian Department of Human Services (DHS) and the Victorian Department of Education and Early Childhood Development (DEECD) have been simplified to improve their accessibility and to minimise any burden on funded sector services (the majority of which are NFP). To this end:

- 2009-12 agreements use simplified documentation including plain English terms and conditions;
- service standards and guidelines, and data collection tools have been reviewed to ensure currency and relevance;
- on-line access to service agreement documentation, service standards, guidelines and other relevant policies is available via the Funded Agency Channel;
- there are no separate program level financial acquittals required of funded organisations as annual financial statements are provided at entity level to assess financial viability and solvency; and
- the service agreement template used for most DEECD programs is streamlined and does not use onerous financial reporting requirements.

The Victorian Government also notes that Arts Victoria, other state arts funding agencies and the Commonwealth arts agency – the Australia Council – have been working collectively since 2000 to develop harmonised reporting practices and funding terms. For major funded arts organisations, tri-partite agreements have

successfully been implemented since introduced in 1997. These involve agreements between the funded company, the Victorian Government agency (Arts Victoria) and the Commonwealth Government agency (the Australia Council).

Case study – the Adult Community and Further Education Board

The following are examples of frameworks currently used by the Victorian Adult Community and Further Education (ACFE) Board that reflect the principles outlined in the Draft Report.

- The Adult Education Business Survey has been conducted three times since 2006. It describes the nature of Adult Community Education (ACE) organisations in terms of their governance and business structures, workforce profiles and financial characteristics. The emphasis in each survey varies. As it contains confidential and commercial information, the survey is conducted using a double blind methodology. This allows the results to be published and distributed to all ACE organisations and stakeholders, thereby returning information to the sector and allowing the economic contribution to be more widely known.
- The Victorian Measuring Impact project evaluation tool was commissioned by the ACFE Board in 2004. The tool provides a common framework to measure the impact of key program initiatives on individuals and communities. It embodies two of the principles proposed in the Draft Report. It is proportional, in that the dimension of the task of measurement is determined by the dimension of the project/activity being measured. It is also flexible, having been designed to be used at a number of points in the project, and can be tailored to the needs of particular projects and communities. The information that is generated through the use of Measuring Impact is valuable to the ACFE Board in determining funding outcomes and impacts. Moreover, it is of potentially equal or greater value to the organisations involved in the project to identify future opportunities for engagement with their communities.

Improving evidence-based practice through better evaluation

DRAFT RECOMMENDATION 5.4

The Australian Government should provide funding for the establishment of a Centre for Community Service Effectiveness to promote 'best practice' approaches to evaluation, with an initial focus on evaluation of government funded community services. Over time, funding could also be sought from state/territory governments, business and from within the sector. Among its roles, the Centre should provide:

- *a publicly available portal containing evaluations and related information provided by not-for-profit organisations and government agencies*
- *guidance for undertaking impact evaluations*
- *'meta' analyses of evaluation results.*

2.4 Victorian Government comment on Draft Recommendation 5.4

The Victorian Government sees merit in the establishment of a Centre for Community Service Effectiveness. The Victorian Government considers that such a Centre could provide benefits to the NFP sector. However, further detail will need to be considered to determine the ultimate suitability of this approach across disparate programs.

There is an absence of strong research and evaluation capacity in many NFP organisations that lack the resources to adequately invest in evaluation. This lack is compounded by insufficient evidence and capability about how best to measure the effectiveness of human service delivery. Further, available evidence is fragmented and contested.

The Victorian Government makes the following comments in relation to the establishment of a Centre for Community Service Effectiveness:

- If developed as a national partnership (involving the different levels of government, philanthropy and the NFP sector), a Centre for Community Service Effectiveness could help overcome fragmentation. It would also be important in developing greater common understandings about service effectiveness between the funders and providers of services. While the Centre could initially focus on how to evaluate government funded services, there may be merit in also having a focus on services funded by philanthropic organisations.
- A Centre for Community Service Effectiveness could be established by providing funding to existing research institutes or universities that have an interest in the NFP sector or public policy research. The utilisation of existing or new research institutes would reduce the perception that government evaluation of its own funding is lightweight or influenced by the expedient outcomes and/or findings.
- An alternate model that could be used is that of the Victorian cross-departmental 'Community of Interest for evaluators group' that meets quarterly to promote 'best practice' approaches to evaluation. It provides an opportunity for discussion, consideration and exploration of new knowledge, methodology and approaches in a supportive, inclusive environment. The Commission could consider this type of body and include membership and participation by NFP organisations. It could be a valuable professional development forum and a way of improving evidence-based practice evaluation.
- The 'meta' analyses could have a focus on evaluating similar programs across several jurisdictions. For example, comparing the effectiveness of the Family Court counselling programs with family support and counselling services funded by the various States and Territories.
- Such a centre could also provide guidance for undertaking formative evaluations (in addition to impact) as these are essential to continuous improvement of program delivery.

However the Victorian Government is concerned that the proposed Centre for Community Effectiveness could result in:

- Separating the responsibility for evaluation of government funded community services from other aspects of the service delivery, which may lead to a diminution in service quality.
- Creating another new structure may increase the complexity of reporting and compliance.
- There may be unintended and negative outcomes for NFP organisations that operate in industries alongside for-profit and government service providers. For example, in the vocational education and training (VET) sector in Victoria, NFP organisations delivering VET have been evaluated in the same processes, using the same tools and against the same standards and benchmarks that apply to other service providers. This evaluation 'alongside' other service providers has contributed to greater recognition of the place and achievements of the NFP organisations.

The Commission should also note the Victorian Government's comments in relation to Draft Recommendation 9.2.

SMARTER REGULATION OF THE NOT-FOR-PROFIT SECTOR

Providing for appropriate legal forms

DRAFT RECOMMENDATION 6.1

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*
- *whether state/territory based incorporation of associations should be restricted to not-for-profits with income less than \$150 000 per annum*
- *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.*

2.5 Victorian Government comment on Draft Recommendation 6.1

The Victorian Government is supportive of a nationally consistent approach to the legal structure of incorporated associations. However, the Victorian Government considers that further analysis needs to be undertaken into the costs and benefits of establishing a new Commonwealth incorporated associations legal structure compared to other options, such as harmonisation of current state and territory legal forms.

Action 11 of the *Victorian Government's Action Plan* addressed the difficulties experienced by NFP organisations with operations and services extending beyond Victoria's jurisdiction. As advanced in the *Action Plan* the Victorian Government is committed to pursuing reform to ensure greater harmonisation of legislation in the NFP sector.

Introducing a Commonwealth option for incorporation would allow multi-jurisdictional NFP organisations to be incorporated as associations once, rather than in several jurisdictions. This could reduce the regulatory burden on these organisations without impacting the rest of the sector.

However, another possibility could be to make amendments to current national legal forms, such as companies limited by guarantee, more accessible to and appropriate for NFP organisations. One way to do this could be to introduce differential reporting obligations for NFP organisations registered as companies limited by guarantee under the *Corporations Act 2001*. The Victorian Government notes that the Commonwealth has been considering the introduction of differential reporting for companies limited by guarantee since 2007.

The introduction of a structured tiered approach to reporting obligations for companies limited by guarantee would reduce the cost and complexity of annual reporting for 'smaller' organisations, and make the form more attractive to those associations that may be contemplating transferring their incorporation to the national level.

A further alternative to a new Commonwealth legal form is harmonisation of state and territory incorporated association legislation, along with the introduction of enhanced mutual recognition procedures. This option would also enable more multi-jurisdictional NFP organisations to incorporate with only one government body.

A current precedent for such an approach is the development of uniform Cooperatives legislation by all states and territories. Following a decision by the Ministerial Council for Consumer Affairs in 2002 to develop a uniform Cooperatives National Law (CNL), a national working party has developed a draft CNL and Australian Uniform Cooperative Laws Agreement under which all states and territories will agree to introduce uniform template legislation. The draft CNL includes enhanced mutual recognition procedures that could inform development of a similar enhanced process for incorporated associations.

Uniform associations legislation would also facilitate development of the proposed 'single portal' for the public record of corporate and financial information. This would

be complimented by completion of the Australian Accounting Standards Board examination of NFP-specific financial reporting standards and the introduction of differential reporting for NFP, private and public sector entities.

Case study – Reform of the Victorian *Associations Incorporation Act 1981*

Each state and territory has associations incorporation legislation originally designed with the intent of providing a simple, voluntary and inexpensive means of creating a separate legal entity for small community based groups with limited resources. In Victoria, the relevant legislation is the *Associations Incorporation Act 1981* (AIA).

Over time, a wide range of associations have become incorporated under the AIA. Reported annual revenue of NFP organisations incorporated under the Act varies widely from \$0 to in excess of \$140 million. As at 30 June 2009, there were 35,290 incorporated associations on the Register of Incorporated Associations maintained under the AIA. The majority of these associations are small with approximately 90 per cent falling below the \$150,000 threshold suggested by the Commission for state incorporation.

The general policy underlying the administration of associations' legislation has been that they are 'light touch' regulatory regimes under which the regulator traditionally has had a minimal role in the internal running of organisations, except for receiving financial reports, maintaining a register of incorporated organisations and in providing some measure of information and advice.

Reform of the Associations Incorporation Act 1981

Following a review of the AIA in 2004-05, the subsequent *SSA Review* and *SCOP Report*, the Victorian Government has commenced a program of major reform of the AIA. Key principles and commitments to reform were outlined in the *Victoria Government's Action Plan* launched by the Premier in April 2008.

The *Associations Incorporation Amendment Act 2009*, which received the Royal Assent on 7 April 2009, introduced a number of reforms to the AIA to:

- enhance the rights of members of incorporated associations;
- enhance the supervisory role of the Registrar of Incorporated Associations;
- simplify and reduce costs for the wind up and liquidation of small associations; and
- make a number of administrative reforms.

Specific changes introduced by the 2009 Amendment Act include:

- merging the roles of Public Officer and Secretary of an Incorporated Association;
- providing that members of an incorporated association must confirm termination of appointment of an auditor;
- providing that the Statement of Purpose of an incorporated association is to be enforceable by application to the Magistrates' Court by a member or by the Registrar of Incorporated Associations ("the Registrar");

- allowing a member or former member of an incorporated association to seek an order from the Magistrates' Court to remedy the effects of 'oppressive conduct' by an incorporated association;
- providing a power for the Registrar to ask the Magistrates' Court to appoint a temporary statutory manager when this is in the public interest;
- allowing small incorporated associations with less than \$10,000.00 in surplus assets to apply for voluntary cancellation of registration;
- clearly prohibiting the distribution of surplus assets to members except in certain circumstances; and
- providing for voluntary administration of incorporated associations by applying Part 5.3A of the Corporations Act 2001 (Commonwealth).

A further Bill to amend the AIA is currently under preparation and will complete implementation of the reforms outlined in the *Victorian Government's Action Plan*. It is intended that an Exposure Draft of the further amendment Bill will be released for a period of public consultation in early 2010.

The proposed reforms are designed to incorporate contemporary corporate governance requirements, provide additional guidance and support to members and officers of incorporated associations, and reduce existing reporting obligations for a range of incorporated associations.

These legislative reforms will be complimented by a number of administrative enhancements. This includes the use of "smart forms" and the ability to register and report online. These enhancements are due to be completed by 2011.

The Commission seeks comment 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

The Draft Report draws attention to the suggestion contained in Professor Mark Lyon's submission that consideration be given to introducing a version of the unincorporated non-profit legislation that has been developed in the USA (and applied by a number of states). This legislation confers limited rights on unincorporated organisations enabling them to hold property, sue and be sued as an entity, and provides some protection to individual members.

The Victorian Government does not accept that, at this time, a sufficient case has been made for the need for such legislation in Australia. In Victoria, fees under the AIA are set at less than cost recovery level and are well below equivalent Corporations Act fees and charges. Ongoing high levels of incorporation under the AIA (currently running in excess of 1,000 organisations per year) do not indicate any reluctance by small organisations to seek incorporation as an association.

Further, Victoria would be concerned that some organisations may seek to avoid appropriate regulatory scrutiny by choosing to remain unincorporated or by seeking to cancel their current incorporation, should such legislation be introduced.

The Commission seeks comment on: whether state/territory based incorporation of associations should be restricted to not-for-profits with income less than \$150 000 per annum

Imposing a \$150,000 threshold would mean that somewhere in excess of 3,000 incorporated associations in Victoria would be required to transfer their incorporation from the AIA to the Commonwealth.

The Victorian Government is concerned that requiring NFP organisations over a certain financial threshold to transition to a national legal structure for NFP organisations could entail high transaction costs and could inhibit diversity and innovation within the sector. Nonetheless, if the benefits are large, and an argument is made for mandating incorporation at the Commonwealth level, the Victorian Government considers the threshold proposed by the Commission to be too low.

The *SSA Review* recommended introducing a threshold based on the Corporations Act thresholds for large/small proprietary companies:

- \$25 million revenue;
- \$12.5 million assets; and
- 50 employees.

A threshold of \$150,000 is significantly lower than that recommended by the SSA and the Victorian Government believes that more work and analysis of a potential threshold figure would need to be undertaken.

Reducing unnecessary compliance burdens

DRAFT 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.*

2.6 Victorian Government comment on Draft Recommendation 6.2

The Victorian Government is supportive of efforts to reduce the regulatory burden on NFP organisations. A nationally consistent approach to fundraising regulation should be pursued by all jurisdictions. The Victorian Government considers information regarding registered fundraisers should be readily shared between jurisdictions and the public; a national fundraising register is one method of advancing this. The

Victorian Government is supportive of efforts to streamline information requirements such as the Standard Chart of Accounts and the Standard Business Reporting initiative.

Regulation will continue to be a necessary and important tool in achieving the policy objectives of governments. However, ensuring that regulation is appropriate and that there is no unnecessary burden on businesses and NFP organisations is a key priority for Victoria. This is the reason why the Victorian Government has committed to targets to reducing the current regulatory burden through the Reducing the Regulatory Burden initiative. The Government has pinpointed specific policy areas where the regulatory burden could be reduced and policy outcomes enhanced. One of those priority areas is the regulation of the NFP sector.

The Victorian Government continues to support national reform by implementing the Council of Australian Governments' (COAG) Seamless National Economy. This includes 27 deregulation priority reforms that aim to reduce unnecessary and inconsistent regulation across jurisdictions and eight competition priority reforms. A good regulatory environment is a crucial part of an efficient economy and is essential to maintaining a competitive business environment. The recent economic downturn has highlighted the importance of initiatives that reduce regulatory burden and of providing more effective and efficient regulation for the community.

Fundraising regulation

The Victorian Government agrees that there are inconsistencies with fundraising regulation across jurisdictions that create unnecessary duplication as well as complexities for organisations that operate across borders.

A nationally consistent approach to fundraising regulation is supported and should seek to reduce the regulatory burden for all fundraisers, including small organisations that operate within the one jurisdiction. This approach could include harmonisation across states and territories. Victoria notes the Commission's suggestion that any move to harmonise state and territory fundraising legislation should result in a body of updated and streamlined regulation that would address current concerns. Any changes should bear in mind the policy objectives for fundraising regulation. The Victorian Government is strongly committed to regulatory reform at the state and national level recognising that efficient and effective regulation is essential for a competitive and vibrant economy.

The Commission has observed at page 6.32 of the Draft Report that the 2007 *SSA Review* recommended a range of improvements to the Victorian *Fundraising Appeals Act* 1998. It should be noted that the *SSA Review* recommendations were endorsed by the Victorian Government and implementing the recommendations was included as a commitment in the *Victorian Government's Action Plan* released in 2008. The reforms were implemented by passage of the *Fundraising Appeals Amendment Act* 1998 in February 2009. These amendments sought to reduce unnecessary compliance burdens for NFP organisations by:

- clarifying the definition of fundraising;
- increasing the default registration period from 12 months to three years; and

- repealing the specific record keeping and labelling requirements for clothing bins.

Cross jurisdictional fundraising register

The Victorian Government recognises that a register for cross-jurisdictional organisations may be beneficial. As the broad objectives of fundraising regulation include maintaining public confidence in fundraising, a register is a mechanism to achieve transparency and accountability.

A register for Victorian fundraisers is available online from www.consumer.vic.gov.au.

This register provides information to consumers about the fundraiser's registration in Victoria, including the nominated beneficiaries and any public contact details. This register is searchable by:

- name of the fundraiser – if a member of the public wishes to verify that an organisation is a registered fundraiser;
- beneficiaries – if a member of the public wishes to search for fundraisers which provide support to certain causes; and
- registration number – if a member of the public wishes to verify a fundraiser's registration number and its expiry date.

The Commission may wish to consider the merits of a range of implementation models of a fundraising register as well as the model in draft recommendation 6.2. In addition to reducing the regulatory burden, streamlining interaction with government for NFP organisations is another key focus for governments. Another model could involve information sharing between current state-level regulators. This would make use of the existing framework and would likely be less costly as a result. It would also provide the bodies responsible for regulating fundraising activities with the ability to maintain the register directly.

Streamlining information requirements

Through the *Victorian Government's Action Plan*, the Victorian Government is committed to promoting the use of a Standard Chart of Accounts and data dictionary for grants. The OCS in DPCD is leading the work on developing a Standard Chart of Accounts for Victoria based on the model developed by the Queensland University of Technology. It is anticipated that the Standard Chart of Accounts for Victoria will be used for new grants from July 2010.

The Standard Business Reporting program is a good example of governments working together to reduce duplication of reporting. At a minimum, the current capability of the Standard Business Reporting program should be assessed to see how far it can be expanded. The inclusion of reporting requirements by NFP organisations is a welcome suggestion and, in principle, the standard business reporting program should be extended as far as possible. A business case which identifies the costs and benefits would need to be prepared before implementation can occur.

Case study – Recent amendments to the *Food Act 1984* (Vic)

The recent amendments to the *Food Act 1984* (Vic) are an example of where the Victorian Government has made changes to remove unnecessary red tape for NFP organisations. The amendments include a graduated and proportionate regulation scheme, which is intended to reduce the regulatory burden on a significant proportion of community groups and low-risk businesses. One such improvement is the new risk classification system for food premises. Class Four premises are intended to include the community sausage sizzle, recognising that as food is cooked and served immediately, there is lower risk. A Class Four premises will not need to be fully registered by the local council, but would simply notify the local council of its food-handling activity instead. The risk based classification system will reduce unnecessary regulation by targeting the regulation to where it is required.

DRAFT 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.

2.7 Victorian Government comment on Draft Recommendation 6.3

The Victorian Government supports a review of the definition of charitable purposes. Prior to adopting a statutory definition of “charity” and “charitable purposes” the Australian Government should consult with all states and territories to achieve their endorsement of a single uniform set of definitions that could be used to determine concessional taxation status under both federal and state law.

The Victorian Government notes that peak sport bodies have made a submission to the Crawford Review of Australian sport that is being undertaken for the Federal Minister for Youth and Sport. The peak sporting organisations from each jurisdiction in their submission to the Review have indicated that the current definition of charity excludes all sporting organisations. The definition of amateur sport that has been incorporated into the definition of Charity in the UK should be considered in any review of the definition of charity in Australia.

Sporting and recreational organisations provide a valuable contribution to community life and have difficulty attracting funding from philanthropic sources. The Victorian Government believes the issue of Deductible Gift Recipient (DGR) status needs to be examined to improve their potential to attract philanthropic funding (Action 21, *Victorian Government's Action Plan*).

Consolidating Commonwealth regulation and improving transparency**DRAFT RECOMMENDATION 6.4**

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*
- 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*

2.8 Victorian Government comment on Draft Recommendation 6.4

The Victorian Government considers there to be merit in the establishment of a national Registrar. The Victorian Government is particularly supportive of the proposal to make the Registrar responsible for endorsing NFP organisations for tax concession status. There is merit in separating the determination of charitable status from the tax collection role of the Australian Tax Office (ATO). A “single reporting portal” could assist in efforts to ‘report once, use often’.

The Victorian Government notes that the proposed Registrar’s role in respect to incorporated associations would depend on an analysis of costs and benefits of alternative options as discussed above. This is also the case for a national fundraising register. Whether a ‘stand-alone’ agency is established may depend on the nature of the roles to be undertaken by the proposed body.

There is a need to continue to provide Indigenous organisations with a level of autonomy and agency. Accordingly, whatever model is adopted for a national Registrar, if the Office of the Registrar of Indigenous Corporations (ORIC) is incorporated into the new body, it should be as a discrete business unit.

The Victorian Government also notes that contemporary international best practice in relation to regulation of the NFP sector indicates that provision of corporate governance and other capacity development training should be a substantial component of the work of a charity or NFP regulator.

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

The Victorian Government considers that whether the proposed national Registrar should be established as a separate agency under the *Financial Management and Accountability Act 1997* or as an additional function and separate division of the ASIC is largely a matter for the Commonwealth.

The Commission seeks comments on: the appropriate reporting thresholds and requirements under the Registrar's proposed functions.

In relation to the issue of reporting thresholds, the Commission is referred to our comments in response to Recommendation 6.1.

The Victorian Government also notes that a threshold of \$150,000 to enter a mandatory Commonwealth legal structure is too low. For example, in relation to the regulation of sporting clubs, an annual turnover of more than \$1 million would better represent the complexity required to warrant a national legal structure.

The Commission seeks comments on: whether the Office of the Registrar for Indigenous corporations should be transferred to the new regulatory organisation.

As noted above, the Victorian Government recognises the need to continue to provide Indigenous organisations with a level of autonomy and agency. Accordingly, whatever model is adopted for a national Registrar, if the ORIC is incorporated into the new body, it should be as a discrete business unit.

The Victorian Government believes that in order to promote the harmonisation of legislation and regulation, it would be advisable for the ORIC to be transferred to the new regulatory organisation, while recognising and maintaining its separate identity and skill set within the larger organisation.

Transferring the ORIC to the new regulatory organisation would be a further step towards recognising the unique needs and operation of Indigenous organisations while minimising the “gap” between mainstream and Indigenous regulation and governance. While it is important to recognise the specialised work and knowledge base of ORIC, the rules applied to Indigenous organisations, or organisations that provide services to the Indigenous population, should be the same. It is entirely appropriate that specialised programs of support are provided to build the governance and management capability of Indigenous organisations.

REALISING FUNDING OPPORTUNITIES FOR THE SECTOR

Simplifying processes for and improving effectiveness of tax endorsement

DRAFT 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.

2.9 Victorian Government comment on Draft Recommendation 7.1

The Victorian Government supports in principle the draft recommendation's objective to simplify processes for, and improve the effectiveness of, tax endorsement. A single national application process would reduce complexity for charitable institutions and increase the administrative efficiency of the exemption process for the State Revenue Office.

However, given the nature of Commonwealth and State taxation, there are significant limitations in applying Commonwealth eligibility requirements to the various tax concessions provided by the States. The State tax exemptions available to charitable institutions vary according to the activities carried out by the organisation. The tax treatment of each activity is determined by the State's tax legislation.

State taxation legislation, such as the *Land Tax Act 2005*, *Payroll Tax Act 1971* and *Duties Act 2000*, provide for a range of exemptions for groups varying described in the legislation as "non-profit organisations", "charitable bodies" and "public benevolent institutions". There are also some specific exemptions available for community health centres, and, in some instances, cooperatives. In most cases, an organisation needs to make an application for an exemption to the Commissioner of State Revenue.

Failure to comply with statutory requirements of taxation, superannuation and work-cover schemes has been a significant issue for many organisations. In particular, some organisations have accrued large liabilities to the Australian Taxation Office (ATO) for non-payment of income tax, Pay As You Earn deductions and Goods and Services Tax returns.

Current taxation arrangements for NFP organisations are administratively complex at both the Commonwealth and State levels and require a range of different applications and assessments to be made. Organisations may have trouble in interpreting and applying for various taxation concessions and exemptions available under state and federal law for NFP/charitable bodies.

Given the wide range of state and territory taxation/duty legislation, a mutual recognition scheme for taxation status of NFP organisations may not be practicable or achievable. A single national application process for assessment of taxation status for NFP organisations as proposed by the Commission could however, provide considerable benefits and lead to a measurable reduction in regulatory burden for NFP organisations. Developing such an approach will require that the Commonwealth, States and Territories work together on appropriate criteria for determining taxation status endorsement.

DRAFT 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.

2.10 Victorian Government comment on Draft Recommendation 7.2

The Victorian Government supports widening of the scope of eligibility for gift deductibility subject to considerations of the cost to taxpayers of such a scheme in terms of government programs and services.

As acknowledged in the Draft Report current arrangements are “complex, inequitable and costly to administer” (p 7.14).

The Victorian Government acknowledges the valuable contribution that sporting and recreational organisations provide to community life and the difficulty these organisations have in attracting funding from philanthropic sources. The Victorian Government believes the issue of DGR status for sporting and recreational organisations needs to be examined to improve their potential to attract philanthropic funding (Action 21, *Victorian Government’s Action Plan*).

In addition to the need to streamline access to tax concessions the Commission could consider options to make the system more flexible. In the aftermath of the devastating Victorian bushfires in February 2009, Australians donated millions of dollars to bushfire appeals. While many of these appeals were organised by recognised charities with gift deductibility status, many others were the result of spontaneous initiatives of sporting clubs and other NFPs that were not able to offer gift deductibility.

*Improving the environment to support sector access to funding***DRAFT RECOMMENDATION 7.3**

To encourage cost-effective giving, the Australian Government should explore options to promote and support planned giving, especially payroll giving and bequests. Options include increasing the awareness of the tax benefits of giving, and financial assistance and advice to smaller organisations to establish planned giving programs.

2.11 Victorian Government comment on Draft Recommendation 7.3

The Victorian Government supports the draft recommendation that the Australian Government should explore options to promote and support planned giving, especially payroll giving and bequests.

Many programs already exist across the Victorian Government and the community more generally. For example, the Victorian Department of Premier and Cabinet (DPC) offers a Workplace Giving Program for its employees and has engaged the Charities Aid Foundation (www.cafaustralia.org.au) to administer the program. This offers departmental employees opportunities to make a significant and lasting impact on the work of NFP organisations.

DRAFT RECOMMENDATION 7.4

The Australian Government should establish a joint working party made up of representatives of the not-for-profit sector, business, philanthropic and other government to explore obstacles to not-for-profits raising capital and evaluate appropriate options to enhance access to capital by the sector.

The Commission seeks views on:

- *the role of different types of intermediaries in facilitating NFPs access to capital*
- *whether there is a need for a new legal form of incorporation for not-for-profits allowing equity investment similar to the UK Community Interest Companies.*

2.12 Victorian Government comment on Draft Recommendation 7.4

The Victorian Government supports the establishment of a working party made up of representatives of the NFP sector, business, philanthropic and governments. The Victorian Government is also supportive of the working group exploring obstacles to NFP organisations raising capital and undertaking an evaluation of appropriate options to enhance access to capital by the sector.

In Victoria, the OCS has established several reference groups made up of representatives from Victorian peak NFP organisations. These reference groups participate in the development and implementation of policy relating to the sector, including initiatives from the *Victorian Government's Action Plan*. Consultation with the sector has assisted in introducing significant reforms and initiatives that are intended to enhance the capacity of the sector.

The terms of reference for such a group would need to take into account or could leverage against the range of COAG reforms underway such as affordable housing initiatives.

The Commission seeks views on: the role of different types of intermediaries in facilitating NFPs access to capital

Access to advisors as intermediaries may be appropriate for those organisations in the NFP sector with the demonstrable financial acumen and stability to manage the risks associated with capital-raising.

The Commission seeks views on: whether there is a need for a new legal form of incorporation for not-for-profits allowing equity investment similar to the UK Community Interest Companies.

Whether there is a need to establish new hybrid corporate forms such as the UK Community Interest Company model will require further detailed consideration.

The Victorian Government notes that it is unclear whether Community Interest Companies would be companies involved in a social enterprise and whether they could qualify for charitable status. For example, if such a structure is supported, it should take into account organisations, such as Housing Associations. Housing Associations need to retain their charitable status to enable them to provide services with concessional tax status.

FACILITATING SOCIAL INNOVATION AND SECTOR DEVELOPMENT

Promoting social innovation

DRAFT RECOMMENDATION 9.1

Australian governments should explore options to expand existing programs encourage and support social innovation. Options include expanding the Cooperative Research Centres program, and encouraging agencies funding social services to create Social Innovation Funds to support research collaborations into innovative solutions to social problems. These initiatives should be tailored to attract research organisation not-for-profit business consortiums and collaborations formed for the purpose of addressing social problems in Australia.

2.13 Victorian Government comment on Draft Recommendation 9.1

The Victorian Government supports the draft recommendation for governments to explore options to support social innovation. The Victorian Government currently has a range of existing programs that encourage and support social innovation.

For example, the Victorian Government has established three innovative, place-based approaches to deliver integrated outcomes based on the specific needs of places.

1. **The Victorian Neighbourhood Renewal** program is a long-term commitment by the Victorian Government to narrow the gap between disadvantaged communities and the rest of the State. It is a new approach that brings together the resources and ideas of residents, governments, businesses and

community groups to tackle disadvantage in areas with concentrations of public housing. Neighbourhood Renewal is creating vibrant places where people want to live.

2. **The Victorian Community Renewal** program operates in urban communities that need extra support to address the challenges they are facing because of run-down neighbourhoods, falling employment and poor access to transport and services. These communities are experiencing change or growth higher than might normally be expected and as a result the services, amenities and solid community structures might be lacking. The Victorian Government has committed \$20.5 million over six years to create a better outlook for the future in these neighbourhoods.
3. **The Victorian Community Building Initiative** is a \$10 million place-based investment and a key element of the Government's commitment towards strengthening rural and regional communities. It brings local residents, government and community agencies together to plan for and address local needs, enhance local leadership and foster community networks. There are 19 Community Building Initiative projects involving 102 townships across rural Victoria.

Interventions include governance structures to facilitate local priority setting and brokering resources from across government. Investments are also leveraged from business and other parties to build community infrastructure, support participation and drive skills and economic development. Place-based approaches provide efficiency gains for government, an increased return on investment and an improved sense of community identity and liveability.

The Victorian Department of Justice (DOJ) also funds a number of programs that encourage and support social innovation. As part of the initiative of the Victorian Aboriginal Justice Agreement, the Koori Justice Unit administers the Community Initiative Program that encourages community based responses to justice issues by providing funding to support once-off research and pilot programs. Projects that will be considered for funding under Community Initiative Program will primarily be those that:

- increase community participation in the development of culturally appropriate and innovative early intervention programs;
- promote reconciliation and partnerships between communities and justice agencies;
- assist in research and the identification of community based best practice initiatives including the planning and development of regional strategic plans and submission proposals;
- clearly promote activities which support the principles of the Victorian Aboriginal Justice Agreement; and
- are a catalyst to, or basis for, long term sustainable capacity building programs.

The Emergency Services Policy and Support section of the DOJ, in partnership with Life Saving Victoria, is currently delivering a Multicultural Water Safety Program (2009/10-10/11) in response to the recent increase in people from multicultural backgrounds drowning.

The Financial and Consumer Rights Council, the peak body for financial counselling in Victoria, has developed a \$100,000 fund for financial counselling agencies to support innovative community projects. This program is newly formed and will define its terms of reference soon.

Case study – The Victorian Office of Gaming and Racing supporting social innovation

The Victorian Office of Gaming and Racing (OGR) has a number of current programs that support social innovation. These are outlined below.

1. The Problem Gambling Research and Treatment Centre is a joint partnership between Melbourne and Monash Universities funded through the OGR. The Centre conducts research into problem gambling combining both medical and social models of health. It also provides and consults on the evaluation of programs, and develops high quality training for health and welfare professionals in clinical approaches to problem gambling.

2. The Innovation Grants Program specifically funds capacity within Problem Gambling Services for social innovation in problem gambling service delivery. Through the program, grant funding is available to fund Gambler's Help agencies to develop and pilot new approaches to treatment and service delivery. The intention of the program is to specifically support the exploration and testing of new ideas. Where these new approaches are demonstrated to be of benefit, the program supports their integration within existing practice and service delivery. The grants are offered through a non-competitive process to encourage collaboration and partnerships, primarily at a local or regional level. Program guidelines were broadly framed to provide maximum flexibility for agencies to consider local needs and solutions.

The program incorporates a dedicated evaluation capacity, with an independent evaluator appointed to work collaboratively with funding recipients to evaluate the innovation outcomes. (See Victorian Government comment on Draft Recommendations 5.4 and 9.2 for a more detailed discussion of evaluation issues.) The OGR supports the dissemination of lessons learnt from each of the innovation projects across the problem gambling sector, and considers mechanisms for supporting broader replication or adaptation of specific innovations that are demonstrated to be of benefit.

3. Local Community Partnership Grants available from 2004-2009 provided grant funding to local community agencies (primarily NFP) to develop projects aimed at increasing understanding of problem gambling amongst specific groups in the community.

DRAFT RECOMMENDATION 9.2

State and territory government programs aimed at building the capacity of not for profits for service delivery or community development should include specific guidance and training on undertaking evaluations.

2.14 Victorian Government comment on Draft Recommendation 9.2

The Victorian Government agrees with the need for building evaluation capacity in the NFP sector. The Victorian Government includes specific guidance and training on undertaking evaluations in most of its programs aimed at building the capacity of NFP organisations for service delivery or community development. Evaluation is an important tool to monitor the effectiveness of policies and assessing where improvements can be made in the future.

The Commission should also note the Victorian Government's comments on Draft Recommendation 5.4 in relation to the establishment of a Centre for Community Service Effectiveness to promote 'best practice' approaches to evaluation.

Examples of Victorian Government programs that include specific guidance and training on undertaking evaluations are set out below.

- a) DPCD has developed a framework for the evaluation of youth mentoring programs and a capacity building strategy for funded organisations. DPCD is planning to design a set of online tools for ongoing program evaluation that organisations can use to collect data. This data will feed into state-wide reports and analysis of findings to inform improvements. It includes training for funded organisations to undertake local review and evaluations. Within DPCD, the Office for Youth has resourced external training and development of a common evaluation framework for future use with funded community organisations to review and assess the impact of the youth mentoring program model. This will assist in building the capacity of organisations and/or staff to carry out evaluation using evidence based tools.
- b) The Governance Training Program is Victoria's primary training initiative aimed at building the capacity of Indigenous community organisations. The program currently consists of three levels – introductory workshops (non-accredited and residential format run of three days), a Certificate IV in Business (Governance) and a Diploma of Business (Governance), both conducted in residential blocks (over 4 weeks and 5 weeks respectively).

The main focus of the training is to provide skills in corporate and financial compliance and management within a culturally appropriate framework. In recent times, Aboriginal Affairs Victoria (AAV) has led the development of a stronger focus on what might be called results compliance. Results compliance aims to provide understanding and skill in relation to using and analysing information for planning and reporting. This work underpins existing modules that focus on strategic planning in the training program. It also aims to build a greater awareness of the importance of evaluation for community based organisations.

Supporting sector development

DRAFT RECOMMENDATION 9.3

Australian governments should explore options to expand the business support programs they provide for small and medium sized enterprises to not-for-profits engaging in social enterprise activities.

Programs that may be suitable include the Australian Government's Business Enterprise Centre, state and territory governments' small to medium enterprise business assistance programs, and local governments' business incubators or infrastructure hubs.

2.15 Victorian Government comment on Draft Recommendation 9.3

The Victorian Government supports the exploration of options to expand business support programs for small- and medium-sized enterprises to NFP organisations engaging in social enterprise activities. Access to such services may be appropriate for a range of NFP organisations and not only those focused on social enterprise.

Since 2004, the Victorian Government has implemented a range of strategies to support the development of social enterprises and NFP organisations. In particular, providing increased access to relevant technical and business assistance, toolkits, networks, and funding of intermediary organisations to provide specialist social business planning services.

Social Traders is a social enterprise organisation established through a partnership between the Victorian Government and a philanthropic trust to support the sustainable development of the social enterprise sector in Victoria. In addition to providing training opportunities and direct support to social enterprises, Social Traders aims to develop social enterprises through increasing available finance, strengthening their trading capacity and available markets and through establishing a coordinated approach to social enterprise development.

The OGR in the DOJ funds the Financial and Consumer Rights Council as the peak body for the provision of financial counselling services across Victoria. The Council works with Small Business Victoria (SBV) in the Victorian Department of Innovation, Industry and Regional Development (DIIRD) to support businesses experiencing financial hardship as a result of the global financial crisis.

SBV provides a range of support services that can be accessed by the NFP sector. In particular, the Skills for Growth program that provides onsite assessment by specialists of workforce planning, skills development and training needs is available to NFP organisations.

The SBV website provides a range of information and support for businesses on matters such as employing and managing staff, managing cash flow and marketing that would be relevant to NFP organisations.

The business focused elements of the \$10.8 million Victorian Government's ACE Capacity Initiative are an example of a business development program focused on

building the sustainability and business capability of small to medium NFP organisations. It includes programs with content that recognises and responds to the unique characteristics of NFP organisations. ACE providers focus on the individual business needs of organisations and acknowledge their independence as well as the purchaser relationship with government.

The Victorian Government also notes the success of the Australian Government's AusIndustry Building Entrepreneurship in Small Business program (now ceased). This program provided small arts enterprises with the resources and skills to develop sophisticated business and financial plans, impacting their longevity and business success. This filled a vital gap in the cultural sector by assisting creative entrepreneurs to achieve maximum value and return from their existing creative assets.

Case study – Local Government social procurement initiative

The Local Government Victoria unit in DCPD is exploring ways to allow councils more flexibility within the current procurement arrangements and requirements to procure from community enterprises.

Reforms aimed at improving services, reducing costs and cutting red tape through collaborative activities amongst councils are being advanced through the Councils Reforming Business program.

One focus area is council procurement and discussions are underway to look at encouraging more social procurement. Social procurement is the process of an organisation choosing to purchase a service that will also provide a social outcome.

One of the project streams is focused on the implementation of the Victorian Local Government Procurement Strategy. The strategy identifies the importance of procurement and how it is an integral component of Council's business activity.

The initial focus of the strategy is to look for ways to assist councils to achieve their direct economic objectives through procurement, but further recommendations in the strategy also highlight how procurement can assist Councils in achieving environmental and social objectives. Current activities are focused on delivering foundation steps, enhancing skills and raising the profile of procurement across the local government sector. Once the fundamentals of the strategy are in place, greater emphasis will be placed on reform activities that illustrate the role of procurement in achieving broader Council objectives, including social and environmental objectives.

Social procurement has been an effective means for achieving inclusion and economic outcomes for disadvantaged areas (as has been demonstrated in Neighbourhood and Community Renewal areas). There has been interest amongst local governments in Victoria to tap this community resource to a more significant degree.

SUSTAINING THE NOT-FOR-PROFIT WORKFORCE

Lowering costs for volunteers

DRAFT RECOMMENDATION 10.1

Australian governments should explore the feasibility of establishing a system of 'Working with Vulnerable People Checks' similar to that proposed by the ACT. These checks should be portable between organisations for a designated time period.

2.16 Victorian Government comment on Draft Recommendation 10.1

The Victorian Government notes that the issue of regulatory checks for volunteers and volunteer-based community organisations is being considered as part of the development of the National Volunteering Strategy. This strategy is being led by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs. Any recommendation should also acknowledge the wide range of jurisdictional issues encompassed by the concept of national portability of such checks.

The Victorian Government requires rigorous checks, approvals and review processes for people working in child protection, disability and related areas. There should be the ability to exchange information between jurisdictions on people deemed to be unsuitable to work with children.

While the concepts are similar, a Working with Vulnerable People Check is different to a Working with Children Check as it relates to persons working with adults.

Any system of Working with Vulnerable People Checks should include:

- rigour in the checking process;
- capacity to exchange information between jurisdictions on people deemed to be unsuitable to work with vulnerable people;
- consideration of the establishment of a national suitability panel to address matters of concern where charges have not been laid; and
- consideration of the impact of cost and increased burden on individuals and NFP organisations.

Addressing current and longer term workforce shortages in community services

DRAFT RECOMMENDATION 10.2

In order to ensure that not-for-profits can sustain their workforces, Australian governments purchasing community services need to base funding on relevant market wages for equivalent positions. Costings need to take into account the skill sets required to perform the purchased services and be indexed appropriately to market wage growth within that industry sector.

2.17 Victorian Government comment on Draft Recommendation 10.2

The Victorian Government has recently provided funding to deliver price indexation to the NFP sector for funding agreements at an annual rate of 3.14 per cent over the period 2009-10 to 2011-12. This is in addition to \$2 million in capacity building grants per year over the same period. This initiative provides funding certainty to the range of NFP agencies that provide services for DHS and DEECD.

The Victorian Government also makes the following general comments in relation to this Draft Recommendation:

- In order for the community sector to best attract and retain staff, employers, unions and employees should maintain their current flexibility to negotiate wage outcomes to suit their own circumstances. The Victorian Government does not decide wage outcomes for community sector workplaces. Wages are determined by the relevant awards or enterprise agreements applicable to the workplace. Awards cover a whole industry or occupation and provide a safety net of minimum pay rates and employment conditions. Enterprise agreements can be tailored to meet the needs of particular enterprises.
- The rate of indexation is largely driven by government wage policy to reflect NFP sector wage costs, recognising that the sector also faces non-wage costs.
- Sustaining a workforce is a more complex issue than the draft recommendation suggests. Issues such as turnover, the average age of the workforce, management capability, training and development and the nature of employment are also important.
- The Commission should consider recent industrial developments impacting the community sector. The Federal Government and the Australian Services Union have recently entered into a Heads of Agreement which anticipates a union federal pay equity claim for the social and community services sector. Outcomes will need to be closely analysed to determine the impacts on government funding of the community sector.

Case study – The Victorian Department of Human Services Price Review Framework process

The DHS Price Review Framework outlines the following approach to establishing the funding for specific services.

Price reviews and the pricing outcome will be transparent and create a shared understanding for both the department and the sector of the parameters for delivering the service by non-government organisations.

Price reviews will be conducted in consultation with affected peak bodies and service providers in line with the Collaboration and Consultation Protocol.

Price reviews will take into account the full costs of delivering services and include

costing approaches using verifiable data where possible or models and assumptions where appropriate. Consideration will be given to full or partial funding and other contributions to the costs of service delivery such as fees or co-payments where appropriate.

Pricing policy should reflect efficient and effective business and service delivery practices, and be flexible in respect of the particular nature of a service and manner in which it is delivered.

Where appropriate, price reviews will be cognisant of the requirements of Commonwealth/State agreements and existing unit cost or price review methodologies that may be specified within them.

Normally the department would utilise the relevant award or agreement for determining the salaries that are utilised in calculating costs. There is a process for reviewing funding if an industrial award is reviewed and salaries are increased.

The Department negotiates an annual indexation as part of each three year agreement. There is also an exception circumstances clause that allows for a review of the indexation rate.

DRAFT RECOMMENDATION 10.3

The Australian Government, through the Community Services and Health Industry Skills Council, should undertake workforce planning for the community services sector having regard to the current and future workforce challenges arising from growing demand and increasing supply constraints.

2.18 Victorian Government comment on Draft Recommendation 10.3

The Victorian Government supports in principle the Industry Skills Council addressing workforce challenges.

The Victorian Government is committed to addressing the ongoing challenge of workforce planning for the community services sector. The long-term trends analysed by the *SCOP Report* pointed to major workforce challenges for NFP organisations in the decades ahead. Action 13 of the *Victorian Government's Action Plan* committed the Government to working with the NFP sector to develop a Community Services Workforce Capability Framework, to help address these workforce challenges.

The OCS, in collaboration with the NFP sector, has now developed a framework that is a practical tool for NFP organisations to help them develop the skills and capabilities of their workforce. The framework addresses issues relating to future recruitment and retention of staff and investment in skills and professional development in the context of an ageing workforce, competitive labour markets and increasing expectations of service delivery.

The Victorian Government has also provided one-off funding to establish a portable Long Service Leave scheme for the community services sector which will improve staff recruitment and retention and professional development of existing staff by encouraging moves between organisations

In recognition of the critical role of the sector in delivering human services, DHS, in conjunction with the Human Services Partnership Implementation Committee (HSPIC), has committed to scoping and responding to workforce issues as one of the sector's primary concerns. The HSPIC Human Services Workforce Project will coordinate sector and DHS responses relating to the sustainability of the sector, capacity building, workforce planning and development.

In the area of early childhood development, establishing a sustainable workforce in areas such as childcare and out of hours care continues to be a challenge. Initiatives are being examined to address these challenges. DEECD, in partnership with the funded sector, is committed to supporting workforce sustainability models and practices.

Using the specific example of early childhood intervention services, DEECD has established scholarships and other incentives for professionals to work in early intervention services. Some of these include:

- Early Childhood Intervention Rural Practicum Placement Scheme
- Early Childhood Intervention Professional Support Scheme
- Early Childhood Intervention New Graduate Incentive Scheme
- Early Childhood Intervention Rural Incentive Scheme
- Early Childhood Intervention Postgraduate Scholarship Scheme

Nonetheless, supply side interventions in the market for community services sector workers may need to be complemented by strategies to attract new entrants to the sector emphasising non-wage benefits. An example of such benefits could be flexible workplace arrangements that better suit the work-life preferences of prospective employees.

Building governance capabilities

DRAFT RECOMMENDATION 10.4

Australian governments should provide support to develop and promote training for not-for-profit management and boards in governance and related areas. They should explore the options for improving access to and quality of such training in these areas with peak bodies and appropriate training providers.

2.19 Victorian Government comment on Draft Recommendation 10.4

The Victorian Government agrees with the need for training NFP management and boards. The Victorian Government recognises that adopting a capacity development approach through the provision of training for boards, members of associations and

cooperatives should have a positive impact on the effective operation of community based organisations and in improving levels of compliance with reporting obligations.

DPCD provides funding to peak bodies, such as the Victorian Council of Social Services (VCOSS) and sports organisations to support prioritised sector training, as well as making one-off grants to support capacity building to a range of community organisations. There is also scope for the transfer of skills and capacity building through corporate partnerships and enlisting the support of existing Victorian bodies, such as Leadership Victoria.

The Victorian Government has also worked closely with organisations such as the Public Interest Law Clearance House (PILCH) to provide better support and guidance to NFP organisations. The OCS recently provided funding to PILCH to develop an online 'Secretaries' Handbook' for Victorian incorporated associations. The Handbook was adapted for Victorian legislation from the original model developed for Queensland associations by the Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology. CAV also worked closely with PILCH in developing the Handbook, providing editorial advice and assistance and in granting access to electronic versions of prescribed forms under relevant state legislation. The handbook is freely available online at: <http://www.pilch.org.au/incguide/>

Other examples of governance related training in Victoria include:

- DH and DHS facilitate board governance training for community health services and other providers. The training of regional and divisional Program and Service Advisers includes a component on governance and the role of the board. There are a range of governance initiatives in DH and DHS at the regional level to assist and develop the expertise of board members and the quality of decision making.
- DEECD partners relevant peak bodies in the development and dissemination of governance and accountability training this training. As an example, DEECD currently provides \$1 million to a key kindergarten peak body for a three year fixed term (commenced June 2008) to deliver pilot programs in three local government areas. The aims of the program are to:
 - enhance sustainability through new models of support, particularly in terms of good governance, community responsiveness, service planning, professional development and networking; and
 - to promote more effective and efficient management of early childhood programs through improved governance practices.
- Local government peak bodies provide training, with State Government support, for both elected officials and staff of councils. This training is aimed at providing participants with the necessary knowledge and skills that facilitate greater accountability and transparency and better decision-making at the local level. Some of this training could serve as a basis for the design and delivery of local leadership training.

Case study – Governance Training Initiatives for Indigenous Organisations

AAV, in partnership with CAV and Swinburne University, has delivered a series of three-day governance training workshops, specifically tailored to Victorian Indigenous community organisations. The workshop program “Managing in Two Worlds – Introduction to Corporate Governance Training Program”, commenced in late 2006. Delivered by Indigenous facilitators, the workshop program is designed to strengthen the management capacity of Victorian Aboriginal community organisations and improve service delivery in the community sector.

The program, initially developed by the Commonwealth Office of the Registrar of Indigenous Corporations, has been delivered across Australia to a wide range of Indigenous community organisations. Under a Memorandum of Understanding between Office of the Registrar and the Victorian Government, the approach and materials used by the Registrar have been adapted to suit the particular needs of Victorian Indigenous organisations.

Upon completion of the Workshop Program, participants are encouraged to continue with accredited training, including the Certificate IV Business (Governance) and the Diploma in Business (Governance). The Certificate IV Business (Governance) is the national standard accredited training qualification for NFP and community organisations managed by Governance Training Program. There are around 200 incorporated bodies in Victoria that can access the program. To date the Program, which began in 2006, has seen over 440 students complete training of different levels.

The training approach aims to draw students from a range of organisations rather than target particular organisations, an approach which has worked effectively in this sector. The program is fully funded by AAV and enjoys completion rates well over 90 per cent. The training package (BSB01 Business Services Training Package) is currently being reviewed by Innovation and Business Skills Australia to ensure it meets the needs of Indigenous corporations and the vocational education and training system.

Analysis of CAV records show that rates of compliance with annual reporting obligations by Victorian Indigenous associations and cooperatives are now substantially higher than those recorded for all registered organisations. The program provides a model of capacity development and support that could be extended to all registered associations and cooperatives.

IMPROVING THE EFFECTIVENESS OF DIRECT GOVERNMENT FUNDING

Providing clarity over funding obligations

DRAFT RECOMMENDATION 11.1

Australian governments should, in the contracting of services or other funding of external organisations, determine and clearly articulate whether they are fully funding particular services or activities undertaken by not-for-profits, or only making a contribution towards the associated costs and the extent of that contribution.

Australian governments should fully fund those services and activities that they would otherwise provide directly. In applying this criterion, governments should have regard to whether the funded activity is considered essential, as part of the social safety net or an entitlement for eligible Australians.

2.20 Victorian Government comment on Draft Recommendation 11.1

The Victorian Government supports in principle draft recommendation 11.1.

Price reviews undertaken by Victorian Government departments take into account the full costs of delivering services. They include consideration of full or partial funding and other contributions to the costs of service delivery such as fees or co-payments where appropriate.

The following examples highlight the way Victorian Government departments and agencies clearly articulate the nature of their funding in grants and contracts for service.

1. DPCD acknowledges that grants for projects are a contribution to the total cost. When funding projects, DPCD looks to leverage funds support from other sources for projects and plays a brokering role in local regions. It is clear that the Department is a co-funder. Applicants can get an exemption to co-contribution requirements where particular disadvantage is demonstrated, and co-contributions can include in-kind support. The Victorian Government considers this a reasonable approach for discretionary grants.
2. CAV provides grant funding to partly fund the services of a number of NFP organisations, including the Consumer Action Legal Centre and Consumer Utility Advocacy Centre. Funding agreements require payment on the basis of performance and provision of deliverables. The amount of funding provided to CAV's 'project based' grant programs are based on a budget proposed by the organisation. Any deviations from the proposal are agreed upfront and articulated in the agreement. Problem gambling and financial counselling services are fully funded for specified deliverables.
3. The contractual arrangements between the ACFE Board and ACE organisations clearly articulate the basis on which contracted services are purchased. This includes identification of the price, service standard and regulatory compliance expectations, reporting and acquittal arrangements and support provided. The NFP organisations that enter into service delivery

contracts are supported to identify, plan for and manage the full cost associated with service provision (for example through the Adult and Community Education Capacity initiative described above).

DRAFT RECOMMENDATION 11.2

For new or significantly changed services or activities, Australian governments should undertake an independent costing exercise to determine their full cost. This costing should take all relevant costs into account in assessing the minimum cost for effective provision of the specified quality of service or activity. This would not preclude the scope for government to set the fixed fee for service or user contribution.

2.21 Victorian Government comment on Draft Recommendation 11.2

The Victorian Government agrees that independent advice is important in establishing costing and funding frameworks. However, where the framework is developed and agreed by both the relevant department and the funded organisations, it is often more cost effective for the department to undertake the work in collaboration with a funded organisation working group. Moreover, it is arguably more important that costing exercises have the input of key stakeholders such as service provider organisations and peak bodies.

Funding should be based on the services provided. A common price should be provided to funded organisations unless there is a specific cost driver (for example remote location). Where an organisation has difficulties managing its budget, and as a result its service costs are artificially high, an increased price should not be provided.

The Victorian Government considers that independent cost assessment can be useful once the new or changed service has been implemented allowing sufficient time to determine its level of effectiveness. The Victorian Government regularly requires independent evaluations of funded services. For example, in 2007-08, KPMG was commissioned to undertake an independent review of the delivery of government funded problem gambling services including those delivered by Gambler's Help services, the 24 hour telephone helpline and the Council of Gambler's Help Services. The review examined the output based funding model, value for money, cost benefits, and opportunities for service enhancement.

DRAFT RECOMMENDATION 11.3

Australian governments should ensure that service agreements and contracts include provision for reasonable compensation for providers for the costs imposed by changes in government policy that affect the delivery of the contracted service, for example, changes to eligibility rules, the scope of the service being provided or reporting requirements.

2.22 Victorian Government comment on Draft Recommendation 11.3

The Victorian Government supports the intent of this draft recommendation. However, the consequences of the implementation of 'reasonable compensation' clauses would need to be carefully considered, particularly the contractual complexities that may emerge through contracts other than 'fixed price' contracts.

The Victorian Government notes that a policy revision may be enacted to encourage or require a change in practice, and the Government may not wish to provide additional funds as it may undermine the objective of the change. Furthermore, it is possible that policy changes will mean that costs of provision of services will reduce.

Examples of relevant clauses in grants and contracts in a range of Victorian departments are set out below:

- In 2003, DHS introduced the Exceptional Events Clause to safeguard NFP organisations against the impact of unavoidable cost increases, primarily industrial and regulatory. Since the 2007 Machinery of Government changes, the DEECD has maintained a consistent inter-departmental approach to safeguarding non-government organisations (NGO) against unexpected cost increases. The scope of the clause is intended to focus on:
 - adjustments to the Australian Fair Pay and Conditions Standard that exceed the NGO Price Index rate;
 - arbitrated Enterprise Bargaining Agreements outcomes that exceed the index rate, where Government intervenes in the industrial process;
 - award changes outcomes that exceed the index rate; and where government has previously intervened in the industrial process and supports the employers proposal; and
 - legislative and government policy change.
- DPCD terms and conditions for grants do not allow for the change of project scope without the recipients agreement (except in response to a breach of agreement or where the agreement must be terminated without fault).
- The Victorian Indigenous Funding Agreement includes a standard clause that, "If you are financially disadvantaged by our breach, we will remedy the financial disadvantage that is caused by our breach". DOJ develops funding agreements on a yearly basis in consultation with its NFP and statutory agencies, even if the program runs over several years or they are a key provider for a recurrent funded program. The 'liability and condition of funding' clauses in the agreement address any reasonable compensation issues.

Ensuring appropriate independence

DRAFT RECOMMENDATION 11.4

That a principle of Australian governments' funding service provision or making grants is that they should respect the independence of funded organisations and not impose conditions associated with the general operations of the funded organisation, beyond those essential to ensure the delivery of agreed funding outcomes.

2.23 Victorian Government comment on Draft Recommendation 11.4

The Victorian Government supports in principle this draft recommendation. The Victorian Government respects the independence of funded organisations and does not impose conditions beyond those essential to ensure the delivery of agreed funding outcomes.

The Victorian Government is mindful of the tension between creating an undue burden for NFP organisations and the need to ensure proper accountability for the expenditure of public funds. The Victorian Government does not usually impose constraints on the operational management of funded organisations providing funding outcomes agreed in the service agreement are delivered.

In some circumstances government may impose conditions which are in the public interest. For example, the recent Victorian Government decision to require sports grants recipients to commit to a sport code of conduct.

The approach generally taken by the Victorian Government is, rather than interfere with the internal operations of NFP organisation, the Victorian Government:

- pre-vets the organisations to ensure their suitability and viability;
- sets agreements that focus on deliverables or, for more risky projects, a project plan to achieve deliverables; and
- ensures adequate reporting from, and accountability of, the NFP organisations.

For example, the Graffiti Clean-up Community Grants guidelines and funding agreements recognise the independence of funded organisations and do not impose conditions associated with the general operations of local councils. The service agreement requires that a funded organisation maintains its legal status, is well governed and has the capacity to provide the funded services. The service agreement does not impose governance requirements additional to those required by the relevant legislation, or impose conditions on the general operation of the funded organisation.

REMOVING IMPEDIMENTS TO BETTER VALUE GOVERNMENT FUNDED SERVICES

Getting the model of engagement right

DRAFT RECOMMENDATION 12.1

Australian governments should ensure that they choose the model of engagement with not-for-profits that best suits the characteristics and circumstances of the service being delivered. In choosing between alternative models of engagement, governments should consider: the nature of the outcomes sought, the characteristics of clients, and the nature of the market. In particular:

- there should be no presumption that the purchaser-provider model will always be the most appropriate model*
- where governments are seeking the delivery of a clearly defined outcome and markets are genuinely contestable the purchaser-provider model should remain the preferred approach*
- where truly competitive markets develop and clients face real choice in the services available to them, governments should consider moving to client-directed service delivery models. This transition should be conditional upon there being appropriate safeguards in place to protect and empower vulnerable clients (or their carers) in exercising choice and ensure an acceptable minimum level of service quality and provision.*

2.24 Victorian Government comment on Draft Recommendation 12.1

The Victorian Government agrees that governments should choose the model of engagement with NFP organisations that best suits the characteristics and circumstances of the service being delivered.

The Victorian Government uses a combination of the approaches highlighted in the draft recommendation. The "purchaser-provider" model, with engagement through "negotiated tender", tends to be preferred for programs that have clearly defined outcomes, outputs and required levels of services. For example, policy settings in the skills policy areas (in particular those enunciated in the *Securing Jobs for Your Future – Skills for Victoria* package of reforms) create contestable markets where the purchaser-provider model is the most appropriate.

Many Victorian Government departments and agencies are progressively moving to client-directed service delivery models. In these instances, clear policies and procedures are in place to provide safeguards to protect and empower vulnerable individuals. An example is in the provision of self-directed approaches for disability services.

Most Victorian Government departments make a distinction between purchasing of goods and services and the funding of services, based on who will be the primary beneficiary. If the department will be the primary beneficiary, it is a purchase, as it is providing input to assist the department deliver a service or function. If individuals/groups in the community will be the primary beneficiaries, it is funding.

That is, the organisation is delivering a service or function on behalf of the department.

The funding framework is not only subject to requirements for transparency, accountability, rigour and best value; it is also subject to considerations of collaboration, certainty, quality services, continuity for clients and building social infrastructure. Funding policy frameworks provide principles for selecting the most effective funding mechanism to achieve the desired outcome for clients, communities and government.

In principle, client focus and outcome are paramount, incorporating client feedback opportunities and funding approaches that empower clients/patients to make choices.

Moreover, the Victorian Government recognises that funding methods need to provide incentives for efficiency and equitable distribution of resources according to need.

Government's expectations of agencies should be clearly articulated and agreed to ensure accountability for expenditure of public funds. These include not only specification of outputs, but also other factors not easily encapsulated in output measures (for example accreditation and evaluation). Contract terms should be variable to reflect broader policy objectives, such as ensuring long-term investment in staff and capital.

DRAFT RECOMMENDATION 12.2

Where a market-based approach is not feasible or appropriate, governments should use other models of engagement. This may involve governments entering into either extended life or short-term collaborative relationships. The latter are likely to be particularly suitable to 'seeding' the development of new and innovative services to address intractable (or 'wicked') problems. Extended life collaborative arrangements should adopt an iterative process that will:

- involve all parties in the design of the program*
- embed and fund an agreed evaluation process, informing program design and modification*
- regularly review and revise the service delivery approaches in light of findings from evaluation, changing demands or environmental conditions*
- provide long term or rolling funding with capacity to adjust funding in light of the modifications.*

2.25 Victorian Government comment on Draft Recommendation 12.2

The Victorian Government provides a range of funding models including collaborative negotiated grant processes that allow for flexibility and a greater level of engagement in planning and program design.

This process has been used successfully for the Youth Mentoring grant funding of innovative targeted projects to address disadvantage and lack of access for people

facing significant barriers. The process has proven effective for partnership engagement and joint planning to design and implement programs tailored to local needs. The program funding agreement can include agreement on the work plan, review milestones and evaluation strategies to inform program improvement and funding body reporting.

In many cases it is useful to use a collaborative approach for pilot programs that may evolve into funded services. Extended life arrangements may address the need for security of funding for agencies, particularly where this relates to ongoing service delivery. However this must be balanced by government responsibility to ensure value for money for the community. In some instances value for money is best achieved through testing the market. The above measures may place potential constraints on government's ability to achieve this.

DRAFT RECOMMENDATION 12.3

Australian governments should ensure that whatever model of engagement is used to underpin the delivery of services it is consistent with the overarching principle of obtaining the best value for money for the community. In determining value for money governments should explicitly recognise any spillover (or wider) benefits that providers may be able to generate. An evidence based approach should be used to assess the nature, extent and relevance of these types of benefits on a case-by-case basis.

2.26 Victorian Government comment on Draft Recommendation 12.3

The Victorian Government supports in principle draft recommendation 12.3. The Victorian Government notes that when determining value for money for the community, the spillover (or wider) benefits that providers may be able to generate are already considered by Government. Where possible and appropriate, an evidence based approach is used.

In certain instances it would be difficult and costly to effectively identify and assess all the benefits. Nonetheless, in an attempt to do this, ACFE's Measuring Impact framework is an example of a measurement strategy that seeks to capture the 'spillover' benefits of a specific engagement with a community.

Moreover, within the arts and cultural sector, the wider public benefits from the Government's investment are comprehensively documented. These benefits – or externalities – are an important rationale for continuing Government support for the sector. As well as economic benefits, such as job creation and the attraction of creative industries, the arts and cultural sector has important social benefits.

The broad social impact of the arts includes strengthening the community, enhancing social well-being and urban regeneration through such efforts as:

- facilitation of social capital through increased interaction between community members within (bonding) and, more importantly, across (bridging) community groups;

- strengthening local community identity and enhanced social cohesion through creative activity;
- enhanced individual and community resilience in the face of rapid social and economic change (i.e. by providing space to explore social challenges arising from, for example, climate adaptation strategies, drought and demographic change);
- improved individual well-being (including mental health) and reduced anti-social behaviour and crime (i.e. engagement of hard-to-reach groups in social activities); and
- the protection, maintenance and promotion of places and spaces of immense heritage value, such as disused immigration processing centres, wharves and ports, industrial sites and schools.

DRAFT RECOMMENDATION 12.4

Australian governments should assess the relative merits of the lead agency model on a case-by-case basis. This should include an assessment of the costs to not-for-profit of adopting this approach including any duplication of reporting and accountability requirements, the additional transaction costs associated with sub-contracting, and the potential for loss of diversity among providers.

2.27 Victorian Government comment on Draft Recommendation 12.4

The Victorian Government agrees that the relative merits of the lead agency model should be assessed on a case-by-case basis.

For example, DPCD’s negotiated grant process allows for flexibility and a community process for selection of a lead agency by a partnership group for recommendation to the funding body/government for endorsement on a case-by-case basis. This approach was demonstrated with the Youth Foundations Victoria Initiative; the Government and Local Partnership Group selected a lead agency in local communities.

However, there could be some risk of lead agencies managing programs without specific expertise in, or commitment to, the subject area. Government departments and agencies may also be subject to restructure or other changes, which could potentially give rise to difficulties for organisations. Carefully balanced against a lead agency approach is the need to support a diverse range and size of organisations operating across many regions.

The ACFE Board currently uses (and has historically used) a lead agency model in a range of ways, particularly in engagements with NFP organisations that are focused on enhancing their capability to deliver services or on the trialling of new service models. The decision to use a lead agency model needs to be made on the basis of the outcomes that are being sought from the funding and a risk/benefit assessment relating to the engagement of a lead agent as opposed to direct engagement with all organisations involved.

Case study – The DHS/DH/DEECD Service Agreement

The DHS/DH/DEECD service agreement provides for both subcontracting and the establishment of consortiums as set out below:

Subcontracting

A funded organisation, except for hospitals, may subcontract if it:

- provides written notification to the department of its intention to subcontract;
- provides the subcontractor's name, address, legal status, relevant qualifications and details of the service to be subcontracted;
- satisfies the department that the third party can satisfactorily provide the service(s) proposed to be subcontracted;
- acknowledges that it remains responsible and accountable to the department for the provision of any subcontracted services; and
- obtains the written consent of the department.

Before subcontracting services, organisations are strongly advised to seek their own legal advice, to ensure that their obligations under the service agreement are not compromised. The subcontracting arrangement must ensure that the subcontractor has at least the same obligations as those that apply to the organisation under the service agreement, including any provision relating to confidentiality, permitted disclosure, insurance requirements and privacy of information. For example, an organisation may ask the subcontractor to sign a deed of confidentiality to reflect its own requirements, as outlined in its service agreement.

Consortium

A consortium is as a group of funded organisations working together to provide services. DHS/DH have a specific service agreement for consortiums.

Improving management and appropriate sharing of risk

DRAFT RECOMMENDATION 12.5

The length of service agreements and contracts should reflect the length of the period required to achieve agreed outcomes rather than having arbitrary or standard contract periods. Extended life service agreements or contracts should set out clearly established:

- *processes for periodically reviewing progress towards achieving a program's objectives*
- *conditions under which a service may be opened up to new service providers or a provider's involvement is scaled back or terminated.*

2.28 Victorian Government comment on Draft Recommendation 12.5

The Victorian Government agrees there is merit in having the length of service agreements and contracts reflect the length of the period required to achieve agreed outcomes, rather than having arbitrary or standard contract periods. However, the

length of agreements should also be considered in the context of the overarching principle of obtaining best value for money for the community.

Where appropriate the Victorian Government has moved away from strict 12 month contracts. For example, CAV endeavours to ensure that the agreement term reflects the nature and anticipated outcomes of the funded project/service. The majority of agreements are based on the project/service length proposed and agreed with the organisation.

In another example, the Victorian Indigenous Funding Agreement uses a standard three year agreement. The terms and conditions are reviewed periodically to ensure best practice. Extending the length to achieve outcomes provides an enabling environment to service providers which allows planning, implementation, provision, and evaluation of services.

However, cost considerations are also important in setting contract lengths, particularly where funding relates to ongoing service delivery. 'Best value' is determined by a consideration of capacity to effectively deliver the specific outcomes and quality of service sought within the available funding.

Standard contract periods can promote value for money by providing an opportunity for the rigorous review of services at the end of the period. They are important in ensuring the ongoing accountability of services to government and of government to the community for the expenditure of public funds. Furthermore, they provide a clear and transparent process for agencies in relation to the review of ongoing service delivery.

Case Study 1 – ACFE Board

Having been initially limited to 12 months, Community Learning Partnerships are now funded for periods of up to 18 months. The duration of the project is determined by the project partners, based on the anticipated time it will take to achieve the intended outcomes. Most projects specify durations in excess of 12 months, meaning that project funding is split over two financial years. This creates planning challenges for an iterative program that calls for applications each year, but anecdotally it appears that the greater flexibility it offers has improved both the processes and outcomes of funded projects.

As well as potentially benefiting NFP organisations through the ability to plan focusing on outcomes, 'extended life service agreements' have the advantage of reducing the frequency of disruption caused through the arbitrary requirement to tender where there is little likelihood of changes in service arrangements being made. On the other hand, extended term agreements may lead to less than optimal service arrangements when there are very limited opportunities to contract new entrants.

Case study 2 – Monitoring framework for the health, housing and community service sectors

The process of periodic reviews is well documented in the Victorian Monitoring Framework – a formal state-wide framework for the monitoring of DHS and DEECD funded organisations by regional and program staff. The Monitoring Framework was introduced in October 2005 following an extensive consultation process.

The purpose of the Framework is to build a sustainably funded human services sector by strengthening and monitoring accountability arrangements. Key aspects of the Monitoring Framework include:

- a streamlined and coordinated approach to monitoring;
- the use of risk management principles to determine the intensity of monitoring of service agreement performance; and
- the inclusion of collaborative components where DHS works in partnership with funded organisations to address risk.

As part of the Monitoring Framework, a regional Monitoring Coordinator is now appointed for each funded organisation. The Monitoring Coordinator seeks input from all relevant staff when conducting its annual review of the organisation. Many Monitoring Coordinators are also Program and Services Advisors.

The Monitoring Framework has resulted in better coordination, particularly with regard to multi-service and multi-regional organisations, and has reduced unnecessary and ad hoc information requests and duplication of monitoring. It is expected that, over time, the Monitoring Framework will provide an improved experience of monitoring from the funded organisation's perspective and more efficient and effective monitoring processes for departments.

DRAFT RECOMMENDATION 12.6

When entering into service agreements and contracts for the delivery of services, government agencies should develop an explicit risk management framework in consultation with providers and through the use of appropriately trained staff:

- *allocating risk to the party best able to bear the risk*
- *establishing agreed protocols for managing risk over the life of the contract.*

2.29 Victorian Government comment on Draft Recommendation 12.6

The Victorian Government agrees that risk management is an important issue in service agreements and that it is appropriate that protocols for managing risk over the life of a service agreement/contract be established.

However, funded organisations vary in size, complexity and management skills. Risk management is ultimately a key responsibility for the board of directors. A funded organisation's board should determine the most effective strategy for its own

organisation. This is one area in which a balance must be struck between organisational independence and departmental contract management responsibilities. It is unlikely to be of any real advantage to either party to tailor a risk framework to each specific service agreement and service delivery contract. Mandating the development of explicit risk management frameworks may be regarded as an additional burden on a NFP organisation.

The Commission should note that work to align Commonwealth and Victorian risk mitigation is underway between the Commonwealth Department of Health and Ageing's Office of Aboriginal and Torres Strait Islander Health, and DHS.

DHS funds public liability and professional indemnity insurance for all NFP agencies, including financial counselling and problem gambling services.

It is also important to note that the majority of DEECD funded NFP organisations are covered by the DEECD funded Community Service Organisations Insurance Program which covers:

- public liability;
- directors' and officers' liability; and
- professional indemnity.

This insurance program is unique to Victoria.

Streamlining tendering, contracting and reporting requirements

DRAFT RECOMMENDATION 12.7

Australian governments should urgently review and streamline their tendering, contracting, reporting and acquittal requirements in the provision of services to reduce compliance costs. To reduce the current need to verify the provider's corporate or financial health on multiple occasions, even within the same agency, reviews should include consideration of:

- *development of Master Agreements that are fit-for-purpose, at least at a whole-of-agency level*
- *use of pre-qualifying panels of service providers.*

2.30 Victorian Government comment on Draft Recommendation 12.7

The Victorian Government supports the streamlining that is key to this draft recommendation, and is already moving to streamline tendering, contracting, reporting and acquittal requirements.

A number of initiatives in the *Victorian Government's Action Plan* are designed to simplify and reduce the accountability and administrative burden on NFP organisations that receive Government funding, for example:

- *Action 9: Ensuring service agreement consistency*, focuses on driving greater consistency in service agreements and accreditation systems and rationalising the amount of data that service providers are required to collect and report on.
- *Action 10: Grants reform*, is targeted at delivering efficiencies in managing and administering discretionary grants including promoting the use of a standard chart of accounts and data dictionary for grant applicants.

Master agreements

In addition, the Victorian Government has convened a departmental working group of DHS, DH, DEECD, DPCD, peak and other organisations to consider, among other things, the development of a whole of government service agreement.

The Victorian Government is in the process of introducing single funding agreements, and establishing a header (master) agreement for regular NFP organisations. DPCD is implementing a Community Organisations Recognition Process to acknowledge those organisations that have a good track record in managing funds and projects. The information will be distributed to all funding departments to minimise duplication. The process will verify that recognised organisations are known to be 'lower risk' and administration and reporting requirements will be adjusted accordingly.

While the concept of 'master agreements' in the Commission's draft report is not fully defined, it would appear that these are overarching or single agreements with a NFP organisation for a range of funded activities. The Victorian Government is supportive of using these agreements where they are appropriate.

For example, to simplify funding and reporting for Aboriginal Community Controlled Organisations Victoria uses a single funding agreement: The project reforms funding and reporting requirements to provide for Aboriginal Community Controlled Organisations with greater flexibility to meet the needs of their community.

Case study – Reform and Service Agreements in DHS and DH

There is a significant reform process underway in the Victorian DHS and DH. DHS and DH have adopted a continuous improvement approach to reducing administrative and regulatory burden and costs to further enhance the way the departments work with their service providers. A recent example includes changes to financial requirements. These departments recently moved from 'acquittals' to standardised financial reporting requirements to minimise data requirements while ensuring sufficient information regarding organisational financial sustainability. Financial requirements within the departments are standard across their service agreements.

In addition, there are four key features of DHS and DH service agreements:

1. Three year agreements: From July 2003, DHS introduced three year service agreements. This reform was intended to provide DHS funded organisations with increased funding security, to enable them to better plan for service delivery.
2. A standard agreement: The format of service agreements is consistent across DHS. Service agreements include financial and legal reporting requirements

standard across all program areas, and policy and funding plans specific to each type of service provided by the organisation.

3. A single DHS agreement: The majority of funded organisations, regardless of the number of different services they provide, have one service agreement with DHS.

4. Policy and funding plans: Service agreements include policy and funding plans relevant to each type of service provided by the organisation. These plans provide transparency in relation to funding for specific services, service delivery requirements and related reporting requirements.

The recent Review of the DHS Service Agreement Management System and the Funded Agency Channel has reduced repetition and duplication in service agreements. Funded organisations now have electronic access to service agreements and data through the Funded Agency Channel.

The Health and Aged Care Information Management Strategy (the Strategy) was developed in 2004 and implemented in 2005. DHS established the Strategy to improve the quality of data, and reduce the reporting burden on DHS and funded organisations.

The Strategy involves a rolling program of review of DHS and DH data collection and reporting requirements across DHS and DH program areas to streamline and reduce reporting requirements to government under service agreements. The Strategy project was initiated to:

- better balance information requirements of DHS programs with reporting burden on funded organisations;
- reduce proliferation and duplication of DHS program data collection requirements; and
- improve program data integrity and quality, and timely feedback of collected data.

Key successes of the Strategy include the development and roll-out of a Common Client Data Set and the retirement of 12 health and aged care data collections since June 2005. Further reduction in reporting workload is expected as the Strategy is rolled out to other DHS divisions.

Pre-qualifying panels

The Victorian Government supports in principle the concept of pre-qualifying panels.

For example, DHS generally utilises funding renewal and direct allocation rather than tendering as a funding method.³ Funding renewal or roll-over involves renewing the service agreement at the expiry of the current funding period. This arrangement establishes ongoing funding for organisations and, in effect confers a preferred provider status. Funding is renewed where performance management and needs-based planning processes demonstrate that a provider is:

- continuing to meet the identified need;
- meeting the agreed service specifications and contractual requirements;
- operating efficiently and effectively; and

³ In 2008-09 DHS used a tender process once out of 1041 fund allocations for new initiatives

- actively engaged in continuously improving services to provide the best possible service.

Another example is the ACFE Board that allocates government funds only to those organisations which are registered with the Board. The registration process involves a self assessment of both the organisational characteristics (governance, incorporation, purpose, etc.) and the financial viability of the organisation which forms the basis for the awarding of registration.

The organisations registered through this process are then eligible to apply to deliver accredited and pre-accredited vocational education and training services on behalf of the Board.

BUILDING STRONGER, MORE EFFECTIVE RELATIONSHIPS FOR THE FUTURE

Mechanisms for effective working relationships

DRAFT RECOMMENDATION 13.1

Compacts between Australian governments and the sector must be supported by well documented plans of action, including at agency level, if appropriate, and supported by practical measures including monitoring and evaluative processes that give concrete expression to the proposed relationship.

2.31 Victorian Government comment on Draft Recommendation 13.1

The Victorian Government supports this recommendation in relation to compacts between governments and the NFP sector.

The DPCD Better Grant Making Action Plan includes action to develop a Service Charter which will set benchmarks and measures for concepts like 'responsiveness', 'good communication', and 'positive working relationships'.

The DHS and Health, Housing and Community Sector's third agreement, Partnerships in Practice – Memorandum of Understanding 2009-12, reaffirms the ongoing commitment to a shared vision and a strengthened relationship between the department and the sector. It acknowledges that the best service outcomes are the product of collaboration, inclusive planning, efficient public policy and clear service funding agreements.

Case study – DEECD and the Early Childhood and Community Sectors

The following is an excerpt from the 2009-12 DEECD Non Government Organisation service agreement and provides an example of the relationship compact between DEECD and the funded sector:

DEECD and the Early Childhood and Community Sectors continue their commitment to work in partnership to achieve shared principles, goals, values

and outcomes.

DEECD and service organisations from the Early Childhood and Community Sectors share an objective to achieve the best possible outcomes from the delivery of Services to Victorian children, young people and their families.

VCOSS and DEECD are exploring the development of a formal partnership agreement to acknowledge that optimum service outcomes are best achieved by collaborative partnership arrangements and inclusive planning and plans of action.

A newly established Service Agreement Working Group chaired by DHS has representation from VCOSS and other peak bodies as well as DEECD and the OCS. This and other forums are anticipated to provide practical measures to the proposed partnership.

Supporting effective relationships and driving change

DRAFT RECOMMENDATION 13.2

The Australian Government should establish an Office for Not-For-Profit Sector Engagement within the Prime Minister's portfolio, for an initial term of five years. The Office would support the Australian Government in its efforts to:

- implement sector regulatory and other reform and the implementation of the Government's proposed compact with the not-for-profit sector*
- promote the development and implementation of the proposed Information Development Plan*
- Initially fund and oversee the establishment of the proposed Centre for Community Service Effectiveness*
- 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*
- facilitate stronger community and business collaboration. The Office should, through the relevant Minister, report publicly on an annual basis on its achievements.*

2.32 Victorian Government comment on Draft Recommendation 13.2

The Victorian Government supports the establishment of an Office for Not-for-Profit Sector Engagement at the Commonwealth level, which complements the Victorian Government's decision to establish the OCS.

The OCS was established by DPCD in 2008 to lead the coordination and implementation of policy priorities affecting the NFP and community sector across the Victorian Government.

The OCS has responsibility to work closely with the NFP and community sector and across government to implement the Victorian Government's Action Plan. To this end, the OCS has established a NFP Reference Group with membership drawn from

peak and NFP community organisations and other large community organisations not represented by a peak body. In addition, Action Specific Reference Groups with membership drawn from recommendations from the NFP Reference Group have been established and include:

- a Regulatory Reform Reference Group;
- a Community Foundations Reference Group;
- a Grants & Service Agreements Reference Group; and
- a Workforce Capability Reference Group.

The Victorian Government notes that the Draft Recommendation refers to the proposed office “implementing contracting reforms in government-funded service” and seeks confirmation from the Commission that:

- the scope of such reforms is confined to Australian Government contracts; and
- the proposed office would work with relevant agencies/departments in other jurisdictions when relating to NFP organisations operating in any state and/or territory that are funded by the state and/or territory government to deliver services.

Finally, while the Victorian Government supports the Australian Government setting up a high level compact with nationally based peak NFP organisations, it should be clear that the compact is between NFP organisations and the Australian Government and does not extend to State Governments.

The Victorian Government would not support the Australian Government cutting across State-based relationships with NFP organisations and potentially undermining the capacity of Victoria to manage its relationships with the NFP organisations that provide core Victorian services.