

## **Submission to the Productivity Commission Review of the Not for Profit (NFP) Sector**

Pine Rivers Neighbourhood Association Inc. (PRNA) congratulates the Productivity Commission of the production of its extensive Draft Report which discusses virtually all aspects of NFP operations.

The clarification of, and suggested modifications to, the NFP/Government relationship are both timely and welcome. The need for effective interaction between NFP and Government has never been greater and the discussions generated by this Report have been, and will continue to be invaluable.

The adoption as policy, of Recommendations (without going into the individual detail of each here) – 5.2, 5.3, 5.4, 6.2, 9.1 - 9.3, 10.1, 10.2, 10.4, 11.1 – 11.4, 12.1 – 12.7, 13.1 & 13.2 will forever change the landscape for NFP/Government relations. The flow on benefits to NFP clients would be significant, as the focus of NFP operations would become less directed towards technicalities, regulation and compliance and more directed towards the clients and their needs.

The “Nationalisation” of NFP’s, however, needs to be given a great deal of thought before any implementation is undertaken. Reference is made in particular to Recommendations – 6.1, 6.4, 7.1 – 7.4 & 13.2 in this regard.

“Nationalization” has much to recommend it, and is on its face, a very attractive proposal, particularly for those NFP that operate across State borders or nationally. Such a policy will reduce the legal complexity of, and cost of compliance to these organizations significantly. PRNA does not believe however, that the benefits and flow-on effects from the implementation of the recommendations endorsed above are dependent on the implementation of the “Nationalization” concept for their success.

PRNA believes that there are a number of potential complications to the success of the “Nationalisation” concept. Issues such as the nature of a Commonwealth Incorporated Association are relevant here. Will it simply reflect a legal structure made up of the common elements of the various pieces of State legislation? Is it intended to include some elements of the Corporations Law – in relation to Governance perhaps? If so will the extensive body of case law relating to the management of a company and

directors and officers duties and obligations become applicable following such governance changes? In an attempt to make fundraising more flexible, will the creation of charges or the granting of other forms of securities be included? To do so may bring with it a whole raft of rights and obligations that have evolved under Corporations and Securities law.

It seems that there are infinite possibilities for the legal status and powers of a Commonwealth Incorporated Association. These issues will take another extensive inquiry to canvas fully. A Policy Reference Group should be established with representatives from all peak bodies, the major players, and some minor ones as well, members of the legal and accounting professions together with representatives from the Commonwealth and State Governments. This group should be tasked with creating the Commonwealth Incorporated Association "entity"; ascertaining its powers, its legal status and its governance, compliance and statutory reporting obligations. It should also consider the incorporation process to ensure that it is as simple and cheap as possible.

These issues are independent from the NFP/Government relationship issues discussed earlier. Those matters could be resolved more quickly at a NFP/Government Department level.

There are many NFP's for which Commonwealth Incorporation is not necessary. The local groups – be they sporting or social - which incorporated to obtain a separate independent legal entity from the members to allow for such things as insurance coverage for their events, to protect the committee members from public liability or to open bank accounts. There still needs to be State Associations Incorporation Legislation to cover the thousands of such NFP's across the country.

The Commission mentioned the figure of \$150,000 in "income" as being a potential threshold over which Commonwealth Incorporation would be required. What does the Commission mean by "income"? In any event PRNA suggests that a figure of \$250,000 is more appropriate.

While these issues are being resolved consideration will need to be given to the Legislative Framework around which the process will operate. The nature and extent of the referrals of power by the States to the Commonwealth will have to be established.

The legislation required to implement the scheme – which leaves intact State Acts of Association Incorporation, saving/validating provisions to make valid acts done by migrating associations, during their hiatus

period, other transitional provisions. The referral – albeit limited – by the States of their powers will, be extensive and complex to implement.

The foregoing does not mean that “Nationalisation” should not, or cannot, proceed, but it will require all parties involved approaching it with a strong commitment to its success, a high level of goodwill and a preparedness to compromise.

PRNA is concerned that Recommendation 6.3 does not really answer the issues surrounding the definition of Charitable Purposes” The 2001 Inquiry made 27 recommendations, is it the Commission’s intention to apply all of them to the current problem? PBI matters are currently dealt with by the ATO in accordance with TR 2003/5 and I refer the Commission to paragraphs 6.1 - 6.8 of PRNA’s original submission regarding this ruling and other taxation matters.

The division of NFP’s into PBI, DGR and ITEC by the ATO does have a valid policy basis. It is the definitions of each that are the issue. Broadening the PBI definition to “let in” more organisations may see the FBT concessions enjoyed by PBI’s become too expensive for the Government to continue– PBI’s rely on this concession as a means of paying low paid Community Sector employees better salary packages. Likewise with DGR status, it is PRNA’s belief that while broadening the criteria required to be obtain this status may lead to an increase in the overall number of NFP’s as gift recipients, it may not lead to an increase in the overall amount given, but rather to a re-distribution of the dollar amount of donations across the broader group, with some current DGR’s reliant on donations potentially receiving less money than before. This issue is really one of public policy, but the potential consequences should not be overlooked.

The taxation position is further complicated by the imminent release of the Henry Report. This report will undoubtedly make recommendations concerning all NFP taxation issues, and hopefully the Commission will have time to review the report’s findings within its own reporting time frame.

PRNA thanks the Commission for the opportunity to make a supplementary submission to our original submission (number133) the content of which it still endorses.