

Productivity Commission Contribution of the Not-For-Profit Sector Draft Research Report NSW Government Submission

General Comments

The report is a positive contribution to our understanding of the not-for-profit (NFP) sector, the impact of the sector on society, and some of the issues it faces. Recommendations around better measuring the sector's contribution, improving evaluation of its impact, improving governance, and promoting better engagement models are welcome. However, NSW has serious concerns about the assumptions underpinning recommendations relating to workforce, and recommendations around full funding. An analysis of costs and benefits should be undertaken before any firm recommendations are made that may result in an additional cost burden on NFP organisations or the States and Territories.

The final report should also take account of the different impacts its recommendations may have on different parts of the sector, different agencies and different jurisdictions. For example, small agencies may have less capacity to implement changes to their funding arrangements.

The draft report supports increased Commonwealth involvement in NFP regulation. To the extent the final report reflects this approach, NSW notes that any proposed introduction of additional Commonwealth regulatory frameworks or bodies must be justified, and should complement existing state and territory regulatory systems. Without more detailed cost benefit analysis it is unclear whether the proposed regulatory split between the Commonwealth (for larger providers) and States (for smaller providers) will have the desired affect of reducing the administration burden. If the proposed directions do not take account of varying NFP structures across States and Territories, there is a risk that some recommendations will have unforeseen consequences for some jurisdictions over others, and benefit some NFPs to the detriment of others.

NSW indicated in its submission to the Issues Paper released in April 2009 that not for profit community housing providers fall into the same category as NFP schools and hospitals, and as such should be excluded from consideration in the study. NSW maintains that while not for profit community housing providers are community based organisations, their status as managers of capital assets and their ability to leverage their own finance with the expectation that they will grow their service independently, excludes them from the Commission's definition of the 'community and social services sector'.

Finally, NSW would support more thorough examination of, and recommendations around:

- Vulnerable target groups and rural and remote service delivery, including workforce capacity building and strengthening partnerships.
- The impact of the current taxation model on NFPs in Australia, given Australia's small population, especially in regional and remote areas.

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.*

The IDP should consider the broad information needs of the sector and should ensure that the information collected provides value for money. For example, national level aggregated financial information would have limited use at the NFP operational level.

Consideration should be given to aggregating data already collected by jurisdictions, and/or utilising data already available, so as not to duplicate existing collections.

The form of the collection should ensure due fit with jurisdictional ICT systems, and NFP ICT capacity.

In refining this recommendation the Commission should reflect on the emerging and substantial reporting requirements for jurisdictions under COAG, some of which will require data reporting on the part of NFPs (where actions rely on government-NFP partnerships). States and Territories should be consulted in the development of the IDP.

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.

The difficulty with this recommendation will be in finding a framework that is comparable across different sectors in which NFPs operate. To be successful the framework will need to consider the social, environmental and economic contribution made by the sector and

place an agreed value on these contributions. While a wide range of indicators may be necessary to do this, it is important that a core set of standard quantifiable indicators are developed that can be readily and meaningfully understood across government.

Comparability and relevance is perhaps more achievable within a certain sector, for example disability or aged care.

The draft report's call for a 'well defined evaluation framework' should capture key contributions made by the sector including 'connecting the community', 'maintaining natural and built assets' and 'service outcomes'.

Again, in finalising this recommendation the Commission should ensure that the establishment of new indicators does not add to, or conflict with, service delivery indicators under COAG agreements.

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'.*

The objective of this recommendation is supported, but the Commission should further consider whether a national approach is needed or whether it can be progressed at a jurisdictional level. See also comments on recommendation 6.2 in relation to the establishment of a Standard Chart of Accounts.

Further, NSW Housing notes that the need for better reporting and evaluation processes for NFP organisations providing social services is less applicable to community housing providers. Housing NSW regularly measures and monitors the contribution of the community housing sector in quarterly and annual reports on specific assistance programs, an annual data collection of business operations and tenant profile and a bi-annual survey of tenant satisfaction and other tenant outcomes. In addition, program evaluations and analysis provide a review of the contributions made by community housing providers in relation to specific projects and the needs of different client groups.

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.*

If a Centre for Community Service Effectiveness to promote 'best practice' is to be established, consideration should be given to the existing efforts and structures (i.e. existing evaluation portals/clearing houses) of NFPs and relevant agencies of State/Territory Governments. This is to ensure minimum duplication and confusion in linking frontline services to best practice.

The Commission may also wish to look into whether it would be appropriate to make the Centre part of an existing organisation. An approach involving an NGO peak associated with a tertiary education institution may be better supported by the sector than would the establishment of a new government agency.

It should be noted that Governments will continue to determine evaluation opportunities for funded programs as part of initial funding decisions.

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.*

If a new Commonwealth legal structure for incorporated associations is to be established, care should be taken that this does not simply add a further layer of regulatory complexity and inconsistency. The introduction of an additional Commonwealth regulatory framework where there are existing state and territory regulatory systems must be justified, and should complement the existing systems. Further detail on this proposal should be provided in the final report.

Given the nature of the sector, which includes many small and very small NFP groups that work locally or within state borders, existing state and territory regulatory frameworks are often the most appropriate approach. Some NFPs are so small and informal that any form of incorporation, and the associated regulatory requirements, would be inappropriate and unwarranted.

There are strong arguments that the current approach, namely the availability of various legal forms where each entity adopts the form most appropriate for its needs, is adequate. The establishment of a single legal form for small unincorporated associations may entail high costs for the organisations.

The draft report asks "*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*". NSW notes that the business name registration does not provide any legal rights to persons who register a name. The function of the business name register is to enable consumers to identify the proprietors of a business where the business is not trading under the proprietor's name. The purpose of the Commission's proposal for a similar registration system for unincorporated associations is therefore unclear. Further detail on this should be included in the final report.

The application of an income threshold for state/territory incorporation would create a two-tier incorporation regime. In practice, there is a risk that the threshold would operate as a barrier to the planned expansion of smaller NGOs. A mandatory threshold would also be inconsistent with the proposal for an optional national legal structure for multi-jurisdiction NFPs.

The report asks "*whether state/territory based incorporation of associations should be restricted to not-for-profits with income less than \$150 000 per annum*". NSW notes that many incorporated associations in the State exceed the suggested \$150,000 p.a. turnover while still operating within a small geographical area and may not necessarily want to be driven into alternative forms of incorporation.

Another related issue concerns the costs faced by associations wanting to migrate from one jurisdiction to another. One possible approach would be to adopt a mechanism of mutual recognition, that is, incorporation in one State /Territory would allow for recognition of incorporation in other States or Territories. Such a process would reduce the need for migration between jurisdictions.

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.*

NSW, through the Council of Australian Government's (COAG) Business Regulation and Competition Working Group (BRCWG) has been progressing harmonised reform on two issues identified in the draft report, a standard chart of accounts (SCOA) for the sector, and a nationally consistent approach to fundraising. COAG endorsed implementation of a SCOA for the NFP sector on 7 December 2009 and is likely to consider BRCWG recommendations on a nationally consistent approach to fundraising in the near future. Under the COAG work, the SCOA will be compulsory for government agencies and voluntary for non-government agencies.

NSW has led the BRCWG's work on developing a SCOA and supports the recommendation for governments to adopt a SCOA to guide government grant reporting requirements for NFPs. Following COAG's decision, the first stage of a national SCOA will be in place by 1 July 2010 where possible. There is currently a state SCOA in place in NSW, although it has not yet been fully implemented.

The proposals for harmonised fundraising regulation across Australia are supported. In relation to a national fundraising register, an alternative approach would be to retain State and Territory fundraising registers under a harmonised national approach, with arrangements for communicating fundraiser details across borders.

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.

As the Commission notes, there are a multitude of agencies involved in determining concessionary tax status for NFPs at the Commonwealth, State and Territory levels. The creation of a statutory definition of 'charitable purposes' is a possible avenue towards simplifying this process. NSW notes, however, that any proposal for such a statutory definition would need to have regard to potential impacts on taxation arrangements within States and Territories.

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.*

The establishment of a national Registrar for Community and Charitable Purpose Organisations is primarily a matter for the Commonwealth Government. However, NSW, would advocate for a consultative process with States and Territories in considering the cost effectiveness of such a function – this would ensure that complaints handling and other state/territory based functions were effectively linked with, and not duplicated or compromised by, the new function.

NSW makes the following points in relation to this recommendation:

- The introduction of additional Commonwealth regulatory bodies must be justified, and should complement existing state and territory regulatory systems.
- Consideration should be given to whether a single reporting portal for public record corporate and financial information, proportionate to the size and scope of function of a NFP, will report profit and loss information.
- Complaints regarding NSW Government services are the responsibility of the NSW Ombudsman. Complaints regarding funding agreements are the responsibility of the funding body. Therefore, it is unclear as to what sort of complaints the Registrar would be dealing with.
- The financial burden of initial registration and periodic review should not fall on the NFPs concerned.
- The detailed operation of any such register would need to be the subject of further consultation, but an appropriate starting point would be the requirements listed under recommendation 4 of the Senate report on *Disclosure regimes for charities and NFP organisations* (2008).
- The national register should not duplicate the current work of Housing Ministers to bring community housing providers that have undertaken development and borrowing activities under a specifically designed national regulatory framework. Housing Ministers have committed to introducing a national regulatory system for large not for profit providers by July 2011.

Realising funding opportunities for the sector

Simplifying processes for and improving effectiveness of tax endorsement

Any tax concessions made at a Commonwealth level, or that are mutually recognised across jurisdictions, may have financial impacts for States and Territories. These impacts should be further analysed before any firm recommendations are made on tax concession issues.

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.

NSW would support simplifying and making more equitable the system of providing tax concessions to NFPs, including exploring the scope for a single national application process for organisations for tax status endorsement, or mutual recognition of endorsement across jurisdictions. The scoping exercise should include consideration of the financial impacts on States and Territories, concession rates in each jurisdiction remaining a decision for the individual jurisdictions, and include research to determine the long term benefits of streamlining the system.

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.

NSW would support simplifying and making more consistent NFPs' access to Deductible Gift Recipient (DGR) status, by widening the scope of DGR eligible organisations.

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.

NSW would support the Commonwealth Government exploring options that would increase philanthropic funding to NFPs, such as through encouraging payroll giving programs and subsidising establishment costs, particularly for small to medium size NFPs.

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.*

NSW would support the Commission's recommendation to establish a joint working party to explore obstacles to not-for-profits raising capital and to determine the appropriateness of using or adapting financial intermediary models and capital raising products conventionally accessed by commercial enterprises, including models and products that have been accessed by NFPs for similar purposes in other countries.

Human services NFPs should not look to Government as an assured source of capital because government funding for NFPs is overwhelmingly recurrent in nature.

NSW Housing notes that a feature perhaps specific to the innovative delivery model of the community housing sector is its ability to develop new assets. Community housing providers are able to leverage assets that they own, which may have been publically funded, to secure private finance for further investment in social and affordable housing and then utilise their rental income stream to service the loan.

Facilitating social innovation and sector development

Promoting social innovation

DRAFT RECOMMENDATION 9.1

Australian governments should explore options to expand existing programs [that] 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.

It is important to attract NFP/research consortiums as a means to establish stronger links with the sector and identify practical issues. While the existing CRC program tends to primarily support research areas that have relatively well established networks and research capacity, its work could be expanded to include collaborations that focus on less established research areas, such as people with a disability.

Under Housing NSW's community housing policy, the NSW Government provides part funding for affordable housing projects through a competitive tender process to community housing providers. Providers also contribute to the project by investing their own equity and/or finance from the private sector. This represents an innovative partnership with the not for profit sector in order to deliver more housing than government could deliver alone.

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.

NSW supports building the capacity of the NFP sector in undertaking evaluations. See also comment in recommendation 9.3.

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.

The NSW Government encourages innovation in funded service delivery. For example, the Government has allocated \$17 million for a disability services sector Industry Development Fund. The Ageing, Disability and Home Care agency within the Department of Human Services (ADHC), in conjunction with National Disability Services (NDS), the national peak body representing non government organisations in the disability sector, is currently undertaking state wide consultation in order to identify and gain consensus about the priorities for disability services industry development in NSW. A range of business support programs and models will be considered when determining how best to meet the priorities identified by the sector.

Existing State Government support for small and medium enterprises (SMEs) is typically subject to a range of criteria and documentation requirements, including an adequate business case to justify the proposed government support, and economic appraisals to evaluate the benefits and costs of options to provide that support. Expanding existing assistance programs to 'social enterprise' activities of not-for-profit enterprises may therefore be feasible only to the extent that the latter are made subject to the same disciplines and requirements applying to eligible SMEs under existing programs.

The report recommends that Australian Governments support social enterprises through their 'business support' programs. However, this may not be the most appropriate source of such support. At a recent World Social Enterprise Forum, the notion of government support through enabling legislation was promoted by the Federal Government, and various models from Australian States and other countries were featured. The common thread was the need for business mentoring of social enterprises to be facilitated through social enterprise peaks (who understand the unique qualities of that sector), partnered with specialised corporate mentors or pro bono legal/financial/business analysis services. Support from government business support agencies did not feature prominently, possibly because these agencies are geared toward the for-profit sector.

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.

NSW has no objections to exploring the feasibility of establishing a system of 'Working with Vulnerable People Checks'. There may be strong support for this recommendation in

the sector, particularly as it relates to volunteers. However, there are a number of issues that would need to be considered, including:

- To what extent such a scheme transfers the onus of decision about engagement from the organisation to government.
- Background checking systems must be evidenced based and highly targeted if they are to be of value.

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.

The recommendation implies that governments should meet the equivalent market rate of wages paid by NFPs. This implies that governments rather than NFPs should carry risk for wage increases.

The report also notes the importance of the independence of NFPs. This is best maintained by separating the role of government as a purchaser of services and NFPs as providers of services. If governments are expected to include the full cost of wages at a level achieved in non-NFP sectors when purchasing services, governments will want to ensure that NFPs are managing these staff costs as efficiently and effectively as possible. This may include placing conditions on the numbers and mix of staff employed by NFPs. NFPs are in the best position to manage risk involved with the wages they pay to staff and this risk should not be shifted to government. It would be preferable if the level of costs covered by government funding of NFPs were based on direct discussion and agreement between government agencies as purchasers of services and NFPs as providers.

It is also noted that staff in NFPs have access to tax concessions generally not available to workers in commercial or government settings. As such, their take-home pay is not as low as a comparison of award rates would suggest.

Furthermore, when discussing appropriate indexation factors on page 11.11, the report notes there should be an appropriate allowance for productivity improvement. This reflects the expectation that the price paid by government agencies for NFP services is not simply indexed by input costs. This is an important consideration in promoting the efficiency and effectiveness of the NFP sector. Governments as funders and purchasers of NFP services have to achieve the best value for money from the use of limited taxpayer funds, and this has to apply to the NFP sector as it does to all other funding and purchasing decisions of government. The appropriateness of making allowance for productivity improvement should be specifically considered in relation to recommendation 10.2.

It is also important to note recent, and emerging, developments that are likely to see increases in wage costs in the sector. The report refers to a 2009 Queensland Industrial Relations Commission equal remuneration decision awarding increases in pay of 18-37% for community service workers. On 4 November 2009, the Deputy Prime Minister announced a Heads of Agreement between the Australian Services Union and the

Australian Government. The Agreement provides for arrangements that preserve the obligations of employers bound by the Queensland decision to continue to pay the rates determined by that decision. In recognition of the forthcoming equal remuneration application under the *Fair Work Act 2009* (Commonwealth), the modern award for the social and community services sector preserves existing rates of pay, loadings and penalty rates (i.e. including all the rates currently applicable in NSW) until 1 July 2011. (For all other modern awards, the commencement date is 1 July 2010.)

The legislative mechanisms for the commencement of the national workplace relations system on 1 January 2010 are now in place, with the passage of both the Industrial Relations (Commonwealth Powers) Bill 2009 (NSW) on 1 December 2009 and the Fair Work (State Referrals and Other Measures) Bill 2009 (Commonwealth) on 2 December 2009, and the earlier passage of relevant bills in Qld, Vic, SA and Tas. This removes the relevance of an organisation's status as an incorporated entity, since the only employers in NSW who will remain outside the national system will be the public sector and local government.

The ASU Heads of Agreement also commits the Commonwealth to discussions with State and Territory Governments both before and after any pay equity decisions to work through funding implications, in acknowledgement of the significant budgetary impact of any equal remuneration orders by Fair Work Australia. This consultation process is likely to occur through the Workplace Relations Ministers Council, and may occur through other intergovernmental arrangements covering the sector.

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.

New workforce planning measures by the Community Services and Health Industry Skills Council should take into account the outcomes of previous work in this area. For example, the Social Policy Research Centre of the University of NSW recently completed a study of the non-government community sector workforce (including the disability services workforce) in NSW, in response to a request from the Department of Premier and Cabinet and the Department of Community Services, following the development of workforce initiatives by NSW Government Human Service CEOs and the Forum of Non-Government Agencies.

In addition, workforce development is a key priority area for the Commonwealth, State and Territory governments under the National Disability Agreement, which came into effect on 1 January 2009. The Community and Disability Services Ministers' Advisory Council has approved the Community Services and Health Industry Skills Council undertaking Stage One of a proposal for the review of the existing skills framework for disability workers. Stage One research will be specifically targeting the identification of any additional qualifications and competencies and other workforce development related priorities that will contribute to disability services delivery. Any additional competencies or qualifications identified will be implemented as part of a review process of the Community Services Training Package.

The community housing sector in NSW, through the NSW Federation of Housing Associations, has undertaken an extensive survey and analysis of the future workforce

needs of the sector. This work has been funded by Housing NSW and has resulted in the development of a Workforce Strategy for Community Housing Providers in NSW.

NSW is also developing a five-year workforce plan for the NFP and government sectors involved in the delivery of child protection reforms. That plan will give account to the skills and supply needs of the sector to deliver on an expanded role in child protection. The plan will also cover all Indigenous NFPs operating in NSW.

Any work commenced nationally in accordance with this recommendation should have regard to the sector specific activities underway.

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.

NSW supports the development and promotion of training for NFP management boards in governance and related areas. This work should build on existing initiatives within jurisdictions. For example, in NSW the Industry Development Fund represents the NSW Government's ongoing commitment to building the governance capabilities of non government organisations providing disability services. See comment on recommendation 9.3 for further details and other training considerations.

Current activities to support the disability services sector include:

- Funding to support the operation of the NCOS Management Support Unit (MSU) for two years. The MSU provides a range of resources including fact/information sheets, templates, policies and procedures and other resources for promoting best practice in governance and management. It also provides phone support, advice and referral, and clearing house functions on training, consultants, board vacancies and regular e-bulletins.
- A state-wide learning and development program aimed at voluntary board members of small to medium not for profit boards and management committees. This program is being arranged by NDS and is to support the implementation of *Its Your Business*, a practical resource developed by ADHC for directors and members of non government organisations.
- ADHC also has engaged NDS to provide financial management training for service providers.

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.

NSW agrees that NFPs require clarity regarding the services and activities they are funded to deliver. It is important that NFPs have accurate information on governments' funding plans to assist them in their investment decisions and business planning, and to assist in the overall efficiency and effectiveness of the NFP sector.

However, the principle of "fully funding" must not be interpreted as government having to take on the risk of meeting all the costs of NFPs, irrespective of how efficient or effective the NFP organisation is. With their own services, governments expect that there will be ongoing efficiencies, so that the funding of expenditure on staff and goods and services typically includes an efficiency requirement.

A more appropriate principle to apply to funding of NFP services is that a price should be set that enables the NFP to deliver the services to the quantity and quality specifications sought by government agencies. If the NFP is unable to deliver the services at the level and quality desired at the price offered by government agencies, then government agencies need to determine if the price offered should be increased, or if there are alternatives to NFP provision that provide better value for the resources involved. This is essentially a purchaser provider-perspective on funding of NFPs, but it should include wider considerations than the cost of services. The NSW Government's procurement policy and the financial framework applied to the government sector in NSW outline the wider considerations that government agencies should consider when funding and purchasing services from NFPs.

When procuring goods and services, the NSW Government has procurement guidelines¹ that apply. To ensure probity, integrity, fairness and consistency, all procurement undertaken by government agencies must achieve value for money and be conducted in an accountable manner. These principles also apply to the purchase of NFP services. The concept of value for money is discussed in NSW Treasury's *The Financial Management Framework for the General Government Sector*². Some of the key concepts of value for money are:

- Taxpayers are the ultimate funders of Government programs and services. The Government is accountable to taxpayers for achieving value for money.
- Obtaining value for money is important because government funds are limited.
- Efficiency, effectiveness and appropriateness together add up to the concept of "value for money".

These concepts should be clearly included in the Commission's final report.

The current model of service acquisition for new funding allows for flexibility on behalf of governments and NFPs in determining solutions to service delivery. The benefit of working through NFPs to deliver services is the ability of these organisations to leverage community capital, including fundraising and volunteers, in the delivery of services.

¹ NSW procurement frameworks are located at: <http://www.nswprocurement.com.au/home.aspx>

² See: http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0003/3774/tpp00-4.pdf

The recommendation for full funding creates complexities in defining the role of the sector and in separating its responsibilities clearly from those of Government. The independence of the NFP sector allows it to be innovative in its approach to delivering social benefit and interfacing with communities. Through this capacity to innovate, NFPs can fulfil these roles in a more effective way than Government. A full funding arrangement would potentially impact on this capacity and over time on the independence of the sector.

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.

An accurate assessment of the minimum cost for effective provision of a service is an important input to the establishment of any funding relationship between Government and NFPs. It is noted, however, that an independent costing exercise would add an additional cost to the process of funding and purchasing services from NFPs.

An alternative approach is for governments to help NFPs build their own costing capacity, or to work with NFPs to jointly determine the cost of a service. This way NFPs can decide whether to take up the price offered by the Government to provide funding for a desired service. For example, the Community Services Agency within the Department of Human Services has developed a costing manual to help NFPs determine the indicative unit costs for a range of child and family services³.

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.

This recommendation is supported in principle and is generally reflected in current NSW funding arrangements. However, the recommendation should make clear that policy changes relate only to the very narrow definition of changes directly affecting the contracted service. Changes in policy that affect the general environment in which the NFP is operating would not be appropriately captured by such a recommendation.

NSW agencies endeavour to protect NFPs from policy changes that have direct impacts on the services they are funded to provide. For example, the current ADHC Funding Agreement recognises that the introduction of new policies may impact on the nature of the Agreement, and notes the agency will endeavour not to impose any change to policy or guidelines which would result in the service provider having to expend further funds for compliance without an associated adjustment to funding.

³ See:

http://www.community.nsw.gov.au/for_agencies_that_work_with_us/policies_and_procedures/costing_manual.html

NSW has previously, including recently, provided one-off allocations to NFPs to support them in implementing policy changes. For example, in 2008/09 ADHC provided \$5 million to eligible disability service providers to assist with a number of policy changes, including criminal record check changes and first aid training for accommodation and respite service providers.

Compensation provisions are often incorporated in contracts in both the private and public sectors to protect contracting parties if there are changes to the contractual terms. Under contract law, a breach of contractual terms can often result in compensation for the disadvantaged party. It is noted however, that the capacity of governments to compensate service providers for increased costs arising from changed reporting and other expectations is affected by the availability of funds.

In relation to the example of changes to reporting requirements presented in the recommendation, NSW notes that compliance with reporting requirements may be low, even where these are specified in contracts (for example; reporting against minimum data sets). Any compensation for changes to contract conditions should only be provided when compliance is guaranteed.

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.

This is an appropriate approach to NFP independence. The recommendation could be strengthened by adding that conditions should also be proportional to the funding provided, taking account of the form of service and the share of activity funded. This is noted by the Commission in 11.19 of the draft report. Government should be able to exercise more control over an NFP where it is a major funder and needs to maintain controls over funding to minimise risks; for example, through standards that the NFPs must adhere to in their contracts with governments. For some service provision minimum standards must be recognised, irrespective of the level of funding; for example, regulations governing working with children.

Recent funding reforms in NSW have recognised that it is inappropriate (and unnecessary) for the government funder to dictate to service providers how a service is to be managed or delivered (rec.11.4). This is increasingly reflected in service agreements with NGOs.

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.*

Recommendations 12.1 and 12.2 split contracts into two types: market based and non-market approaches. In fact, there is more likely to be a continuum of contractual forms. The final report should consider providing some guidance on when each type of contract would be appropriate, and the issues that need to be addressed to make each type of contract successful. For example, good evaluation arrangements would be part of all contract approaches, while robust output measurement would be more relevant to purchaser provider contracts.

The appropriate engagement model must be based on a case-by-case assessment. The purchaser-provider model will be the appropriate approach where governments are seeking the delivery of clearly defined outcomes and markets are contestable.

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.*

NSW acknowledges that there are instances where non-market models of engagement are beneficial, such as in developing models of service for older people, younger people with a disability and their carers.

Recently ADHC commenced a pilot of the *Families Solution Program*. This is a three year inter-agency demonstration model for families under severe stress who care for children and young people with intellectual disabilities and complex behavioural needs who without additional support may be at risk of relinquishing the care of their child or young person. This project model was developed in conjunction with the Children's Hospital Westmead and is being delivered by UnitingCare Burnside with clinical input from the Children's

Hospital. The project is overseen by an interagency steering committee and provides for an evaluation of the program.

It is noted that the capacity of government funders to progressively adjust funding arrangements is often limited in practice. This is because most program funding is 100 percent committed and very rarely becomes available for alternative uses.

See also comment in 12.1.

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.

Governments should ensure that the model of engagement is consistent with the overarching principle of achieving the best value for money for the community. Spillover effects should be included in this assessment where feasible, and an evidence based approach is essential.

In practice, spillover effects may be difficult to estimate, and it must be recognised that these are not unique to NGOs.

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-profits 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.

NSW supports this recommendation. The lead agency/regional model has been employed by some NSW agencies for NFPs that have services across NSW. Agencies also encourage the formation of consortia to deliver funded services.

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 scaled back or terminated.*

The report notes that there are advantages and disadvantages in moving to longer term funding agreements, with flexibility to alter services as needs change diminished as the

time of the funding agreement increases. There is merit in an approach which determines the length of contracts with respect to the intended outcomes of the funded service, and the length of time over which these can be expected to be achieved. There are also advantages for agencies in having contract renewals staggered, rather than having all renewals due at the same time.

One model of contracting with NFPs that may give greater funding certainty while providing for some flexibility in service delivery models is through funding agreements that guarantee funding for a longer period (e.g. five years, subject to legislative and other requirements) but allow the purchaser to alter through agreement the specific mix and quality of services within the total level of funding. This would provide more certainty for the NFPs to employ staff and fund operations, while allowing agencies to work with the NFP to modify services so that they meet changing community needs and government priorities.

NSW will be progressively standardising contract terms as part of a funding reform program across human service agencies (Department of Human Services and NSW Health). The majority of contracts are for 3 years, with shorter and fixed term arrangements for time limited activities such as pilots. Longer contract periods would be linked to performance, productivity and Government priorities.

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.*

This recommendation is supported in principle, but would benefit from more detailed discussion of different types of risk and of who is in the best position to identify, assess and manage these.

The NSW Government's *Working With Government Guidelines for Privately Financed Projects* provides some guidance on the risks that need to be assessed with PFP projects. Some of these risks, particularly operating risks, are relevant to NFPs. These risks include:

- **Inputs:** the risk that required inputs cost more than anticipated, are of inadequate quality or are unavailable in required quantities. This results in cost increases and in some cases adverse effects on quality of service output. This risk is generally allocated to the private party, although in limited circumstances Government may take back some of this risk through benchmarking or where it controls inputs.
- **Operator failure:** the risk that an operator may fail financially or may fail to provide contracted services to specification. The failure may result in service unavailability or an inability for Government to deliver core services. In each case Government needs to make alternative arrangements for service delivery with corresponding cost consequences. Government may carry out due diligence for probity and financial capacity to manage this risk.
- **Technical and service obsolescence:** the risk of the contracted service and its method of delivery not keeping pace, from a technological and service model perspective, with other providers and/or public requirements. This risk can also be mitigated through the

monitoring obligations in the contract and the development of detailed, well-researched output specifications.

- Demographic change: the risk of a demographic/socioeconomic change affecting demand for contracted service. Government can undertake its own due diligence on the indexation procedure to ensure that its payments do not overcompensate for inflation and demand.

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.*

The Commission seeks views on how these proposals could be achieved without increasing the complexity of the engagement processes or agreements and contracts.

The report notes that tendering, contracting and reporting requirements have become overly prescriptive, imposing significant costs on NFPs, and that there is a balance between ensuring accountability and reducing costs associated with reporting for NFPs.

The NSW Government recognises that there would be benefits for NFPs and government associated with streamlining the tendering, contracting, reporting and acquittal requirements in the provision of services.

The new Department of Human Services (which includes the main funding agencies in NSW) is currently developing reforms to streamline tendering, contracting, reporting and acquittal requirements for funded service providers. Key reform proposals expected to realise reduced compliance costs for providers include:

- implementation of third party accreditation with mutual recognition of other quality standards as a key element of the system
- movement to a system of output based acquittals that would reduce financial reporting requirements for organisations that meet their contracted outputs
- development of a pre-registration system for purchasing that draws on the results of the processes above to reduce the number of times where a provider's corporate and financial health is verified.

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.

As noted by the Commission, *Working Together for NSW* (2006) is an agreement between the NSW Government and NSW non-government human services organisations. The principles of the agreement are consistent with or complement the principles drafted for the Commonwealth Government's national compact with the third sector.

Working Together for NSW sets out shared values, goals and principles to guide the relationship between human service NSW Government agencies and NGOs, with the objective of achieving 'better outcomes for individuals, families and communities'.

NSW takes a broad approach to fulfilling responsibilities under this Agreement, focusing on specific areas of activity, specific client groups and overall capacity building of the NFP sector. This approach recognises the diversity of the NFP human service sector in NSW and places a focus on working together to support vulnerable people.

NSW would not support an approach that required resources and a program of work to be dedicated to fulfilment of the compact, if those resources were not directly targeted at delivering on specific priorities or results for communities and vulnerable people. Evaluation of joint work would need to take account of the extensive and diverse activity underway across human service agencies.

If greater emphasis were to be placed on specific activities under a compact, attention would need to be given to ensuring that the diversity of the sector was suitably represented (e.g. Aboriginal providers, disability services and the community care sector).

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.

This is primarily a matter for the Commonwealth Government. The NSW Government is supportive in principle, and would advocate for a consultative process with States and Territories in the establishment of such an Office should the recommendation be adopted.

Appendix A – Specific Comments on the Draft Research Report

Chapter 7 - Not-for-profit funding

Government should not be referred to in the second sentence in section 7.2 (page 7.5). It could be changed to say “It is widely considered by the sector that the current eligibility requirements and endorsement processes for organisations to access tax concessions are complex, inefficient and inequitable”.

Page 7.10 states “In addition, many state and territory governments do not provide tax expenditure estimates, and for many of those that do, they often do not distinguish between NFPs and other concessional organisations, such as government entities”. This fails to recognise that NSW does in fact provide estimates for each type of tax expenditure and information on the methodology used. The emphasis should be on those jurisdictions that do not provide this data at all.

It is not correct to state that “COAG has harmonised payroll tax legislation” (page 7.15). This was progressed by States through Treasury departments. Initially bilateral harmonisation was achieved between NSW and Victoria.

Chapter 8 - Competitive neutrality issues

The value of tax expenditures for both payroll tax and gambling tax should be updated to reflect the updated figures for 2009-10.

The report notes the value of payroll tax concessions for 2009-10 is estimated at \$194 million (last paragraph, page 8.10). This figure is incorrect, as it refers to the estimated value of the payroll tax exemption for 2008-09 (as outlined in the 2008-09 Budget Paper No.2).

Using 2009-10 Budget figures for 2009-10, the estimated value of NSW payroll tax concessions is \$203m, made up of:

- schools and colleges \$143m
- religious institutions \$11m
- charitable institutions \$36m
- private hospitals and nursing homes \$13m

The report also states that the value of gambling tax exemptions for 2009-10 is \$518m (penultimate paragraph, page 8.10). This is actually the estimate for 2008-09 presented in the 2008-09 Budget Paper No.2. The correct estimate for 2009-10 for NSW gambling tax exemptions is \$596m.

Chapter 10 - The not-for-profit workforce

Extent of workforce shortages, staff turnover and difficulty in recruiting staff

Page 10.25 mentions that in 2008, 64% of community organisations reported difficulty in attracting appropriately qualified staff. There were general workforce shortages in 2008

prior to the impact of the global financial crisis. To help put the figure quoted in perspective, the Commission should provide some comparable measures of recruitment difficulties in other sectors at the same time.

The statistics on page 10.15 that 42% of community care workers wanted to work additional hours suggests that there is a pool of existing workers on current wages that would be available to meet the increasing demand for NFPs services in community and social services. The underutilisation of the existing NFP workforce should be an area that the Commission considers further in its final report.

On page 10.19 the reports states that in the aged care sector around a quarter of employees have to be replaced every year. It would also help put this figure in perspective if the Commission could provide some measures in other comparable sectors.

Chapter 11 - Direct government funding

Better engagement would help NFPs and government understand their different roles in responding to and meeting community needs

The report notes comments from NFPs who feel their views are not fully considered in shaping the policies which government agencies implement via purchaser provider arrangements. Better methods of engagement would provide for better understanding of the different roles and perspectives of NFPs and government.

The engagement process between governments and NFPs should aim to make the process of policy development, priority setting and implementation transparent so there is understanding of the inevitable tradeoffs that have to be made when resources are limited relative to needs and the common objective of achieving the best value for money from use of government funding.

The draft report notes that improved signals from government about its long-term funding plans would assist NFPs in workforce planning, in investment decisions and in decisions about appropriate legal form. It is important that governments provide information on their funding plans, priority areas of funding (i.e. the areas of community activity where they see the largest community benefit), the success rate of funding applications and the amount of funding they will make available to NFPs. This information will allow NFPs to tailor their funding proposals and to allocate resources more effectively. The draft research report notes that there is evidence that some organisations spend almost as much in resources in applying for grants as they ultimately receive.

Long-term funding information which includes governments' priority areas, the amount of funding, funding criteria and the success rate of applications could be detailed on governments' websites for NFPs to consider prior to lodging their funding applications.

Chapter 12 - Delivery of Government funded services

Evidence on multiplicity and burden of contracts with NFPs

There are frequent mentions in the report of problems created when NFPs have to manage a multitude of funding contracts and regulatory requirements. In most cases these

are based on individual examples. It would assist in providing a perspective on the extent of this issue if there was some survey that the Commission could access that identified the extent of multiple funding sources that NFPs have to deal with.

The NSW submission noted the results of a survey into how many NFPs had multiple contracts with agencies. The survey looked at NFPs funded by three agencies that were the largest funders of NFPs (DADHC, DOCS & NSW Health). The survey found that that 87% of NFPs receive funding from just one of these 3 agencies, with the remaining 13% receiving funds from more than one NSW Government agency.

There also are frequent mentions in the report of the excessive burden of contract management, and regulatory requirements. In most cases these are based on individual examples. As noted on page 12.36 (when discussing NFPs concerns with purchaser provider arrangements) the report states that there “... is a substantial body of mostly anecdotal evidence suggesting that individual organisations have had to absorb additional costs as a result of the transition to purchaser provider model and to some extent these costs have impacted negatively on service delivery.” It would assist in providing a perspective on the extent of this issue if the final report was able to reference some rigorous studies with data and analysis of the compliance burden of contract and regulatory requirements.

Internal efficiency of NFPs

On page 12.3 the report notes that impediments to efficient and effective delivery arise both from factors internal to NFPs, and from external factors such as the regulatory and purchasing role of governments. The focus of the current report is on these external factors. The value of the Commission’s review of NFP efficiency and effectiveness would be enhanced if the final report could assess the internal administrative and organisational efficiency of NFPs in more detail, given the potential for efficiency improvement from organisational level strategies to reduce waste and benchmark performance.

Appendix B of the draft report contains a theoretical discussion of approaches to measurement of efficiency and effectiveness, but does not include reference to studies that have used these techniques with the NFP sector. While empirical evidence on the productive efficiency of non-profit organisations is limited, a literature search may identify analyses that would further inform the final report’s conclusions on this point.

In a separate project, the Productivity Commission is looking at public and private hospital performance and efficiency, which covers NFP hospitals. The methods used in relation to NFP hospital performance could be applied more generally to NFPs. These include partial indicators of productivity (eg, services per FTE, cost per client) and more sophisticated multivariate analysis where data are available. These measures of productivity may be impacted by the way governments regulate and contract with NFPs, but in sectors where NFPs experience similar government interactions, variation in internal productivity may be observed through these measures.

Governments require the public services they operate to achieve ongoing efficiency improvements. In NSW this is reflected in the requirement that agencies put strategies in place to deliver at least a 1% efficiency dividend each year. All organisations can improve their internal processes and purchasing arrangements to find efficiencies on an ongoing basis. The report should include more extensive analysis and discussion on the ways in

which the NFP sector can promote ongoing efficiency improvement at an organisational level.

The Commission on page 2.18 notes the argument that there is a trade off between efficiency and the unique nature of NFPs that may result in better quality of service. These unique features include reliance on non-professional staff and the community connections that small NFPs can make. On page 2.19 the Commission also notes that mergers may improve longer-term efficiency but at the expense of the unique values smaller NFPs can deliver with the effectiveness of services. This argument needs to be tested. Even if evidence confirms this, there is still the potential to benchmark NFPs of similar role and size to identify which are more efficient.

Some of the issues mentioned at the Business Roundtable on 6 July 2009 (see Box 2.4) note internal impediments such as the quality of systems, governance, and planning impact on efficiency and effectiveness. Box 2.4 notes a merger of a NSW and Victorian charity that lead to consolidation of back office functions and a four fold increase in funding, but also notes that some NFPs are reluctant to consider mergers. An assessment by the Commission on the potential of mergers to improve efficiency and effectiveness would assist in better understanding how the NFP sector could improve its contribution to the community.

The Charity Commission for England and Wales has investigated the benefits from collaboration and mergers, and that the Productivity Commission could assess its findings further in its final report. The Charity Commission notes that⁴:

- The most common reasons for merging reported were to increase efficiency (54%) and to either prevent duplication of services or provide better services (42%), with 44% of charities reporting that service delivery had improved as a result and 35% that the merger had cut administration costs.
- Sharing knowledge (59%), joint service delivery (49%), and sharing resources to increase efficiency (40%) are the most common reasons given for collaboration.

The Commission's review of the literature on comparative efficiency of NFPs and on the impact of mergers on efficiency and effectiveness of services should be included in the final report.

Appendix H: A case study on social housing

The Commission has an extensive appendix on community housing as a part of the not for profit sector.

Specific Issues

- The report suggests that community housing can be defined as rental housing provided for low to moderate income or special needs households. In fact, community housing also caters to those on very low incomes (p. H2).
- The report suggests that community housing is different from public housing in so far as it has a focus on 'community development' goals. However the regeneration of public housing areas often encompasses community building and community development activities (p H2).

⁴ See: UK Charities Commission accessed in October 2009: <http://www.charity-commission.gov.uk/publications/rs4.asp>. See also: <http://www.charity-commission.gov.uk/Library/enhancingcharities/pdfs/charmercga.pdf>

- The additional functions of community housing organisations listed in Box H1 should include leveraging assets and securing private investment in affordable housing.
- The definitions of community housing models are unclear. For example, box H3 suggests that 'community groups' should provide support services to tenants. This should be broadened to 'other agencies' as these include government as well as non-government service providers.
- The report suggests that NSW has developed an affordable housing strategy. In fact, *Planning for the Future* is a community housing strategy. The ten year target it sets runs from 2007-08 to 2016-17, not 2017-18 as suggested in the case study (p. H12).
- The report suggests that Victoria has the most advanced policy and regulatory framework encompassing the sector. In fact, NSW's regulatory code was introduced most recently, in May 2009. It aligns with the proposed national regulatory framework which was developed and supported by all jurisdictions. Jurisdictions, including Victoria, previously agreed that they would move to harmonise their regulatory arrangements with this framework. It is arguable therefore that NSW's framework represents the most advanced at this point (p. H12).
- In Box H4, the report suggests that in NSW, providers can choose their own tenants provided they meet eligibility requirements. In fact, prospective tenants must be on the state housing register. In addition, NSW is moving towards introduction in 2010 of a common access system, with a common waiting list and common application form.
- The report suggests that NSW will transfer 7000 dwellings to social housing providers. It would be more accurate to note that NSW is seeking to transfer title to 7000 dwellings that are currently managed or will be managed by community housing providers.
- The report endorses the view of researchers Gilmour and Bourke in suggesting that commercialisation of community housing providers 'leads to potential conflicts between the business and social goals' of the providers. This has not been the experience in NSW and the new regulatory code for community housing providers is designed to ensure all interests in the community housing sector are appropriately balanced (p. H28).
- Regulation has been introduced, and is not under development as suggested on p. H31.
- The report suggests that intervention in tenant allocation policies threatens the independence and viability of community housing providers. NSW is introducing a common access system. This is consistent with the housing reform agenda agreed by COAG. It is not anticipated that it will threaten the viability of providers. Rather, it is anticipated that services to prospective tenants will be streamlined and will therefore improve considerably (p. H37).
- The report notes the use of voluntary labour by community housing providers. This is not the case in relation to growth providers or other large housing associations, which manage the vast majority of community housing stock. It is the case for the very small co-operative housing sector in NSW and the small providers funded through the Local Government Community Housing Program (p. H42).
- The report makes comments about the need for further evaluation and measurement. This could better reflect the current COAG Housing reforms in these areas (p. H43).
- The concluding comment about the lack of a clear and consistent government vision for the sector, lack of accompanying regulatory framework and lack of funding certainty (H.44) fails to adequately recognise significant direction and certainty given for the sector in the NSW *Planning for the Future* strategy. Notwithstanding this, it should be acknowledged that there remains a need for further direction and clarity for the sector's future that builds upon this existing framework.

- The comment that ‘there does not appear to be a consistent view of the roles of the public and community housing sectors, and the relationship between them’ appears appropriate (H.44), particularly in light of the speed of reform and commitments to the community housing sector which have progressed ahead of strategies in relation to the whole social housing system and/or clarification on the future role of public housing.

General Issues

Financial performance

The case study notes that the available evaluations of community housing providers have confirmed the strong financial performance of these organisations but remains cautious about whether they can be called ‘cost effective’ as they derive from favourable financial and tax concessions. This fails to recognise that community housing funding is the only part of the total investment in social housing (including for state housing authorities to deliver public housing) which is making a return on investment.

It should also be recognised that the private housing market does not operate efficiently to deliver appropriate housing responses for people on very low and low incomes, and many people with high needs. In this context, ongoing support by Government is needed. At present, this support is provided through the range of financial arrangements that are identified in the case study. Community housing providers operate in this context to maximise the outcomes for those in housing need. It is not clear if the need for ongoing government support is recognised in the draft report.

Intervention in providers’ allocation policies

Intervention in tenant allocation policies by SHAs which threatens their independence and viability is identified in the case study as an emerging issue for community housing providers. It is suggested that this ‘forces community housing organisations to accept tenants with complex needs and low incomes, since these candidates are at the top of public housing waiting lists’. It is argued that this increases management costs, decreases rental revenue, and impacts on ability to cross subsidise between those on modest and low incomes. There is also a comment that these pressures are set to intensify, with a requirement being attached to funding under the Social Housing Initiative that public and community housing wait lists should be integrated (H.37-38).

In NSW community housing providers are required to house households who meet public housing eligibility criteria. In a context where the demand for social housing far exceeds supply, it is important that all providers have in place fair and transparent processes to determine access to social housing based on housing need.

NSW is implementing a single waiting list for social housing, as part of a Common Access Strategy. There are significant advantages to a centralised waiting list. Movement towards a multi-provider system, through the growing role of the community housing sector, has resulted in public and community housing providers of social housing duplicating efforts to receive applications, undertake needs assessments and maintain separate waiting lists.

This has resulted in access becoming unnecessarily difficult for clients. Under current access arrangements, clients have to find providers that may be able to help them, contact each provider, and separately complete an application form for each provider. They must participate in an assessment with each provider and then maintain contact with each of

them while waiting for assistance. A single application form and waiting list will make it easier and fairer for applicants to access housing assistance from social housing providers, regardless of whether the provider is part of the public or community housing sector.

Comparisons between community housing and public housing

The case study includes comments about the differences between community housing and public housing which should be clarified.

The potential inadequacies of public housing appear to be a theme. For example, there are suggestions that perceptions about the failings of public housing are the reason for declining Government investment in the sector (H.17). As a counterweight to this, the positive attributes and successes of public housing should also be highlighted, particularly given that the current national reform agenda includes public housing continuing to play a significant role.

The case study includes among the reasons for expanding the community housing sector: 'to provide choice in housing for tenants of social housing since public housing is largely standardised and does not cater to groups with different needs' (H.1). It should be clarified that both public and community housing providers house clients with a range of non-housing needs, and that public housing has considerable experience and ability in responding to clients' varied needs.

The case study suggests that community housing workers indicate a greater willingness to assess disability and medical conditions (H.37). It is not clear what this means and as an indicator of activity, there are similar levels of allocations to DSP recipients for both sectors. Both sectors also use prioritisation processes based on need.

Positive outcomes from community housing projects as compared to for-profit and public housing are listed, including: greater consideration to designing for long-term management; focus on environmental issues and life-cycle management of properties; interest in reducing tenants' utility charges; and design for particular client groups (eg. disabilities) (H.42-43). Again these approaches are not limited to the community housing sector but are being implemented across the social housing delivery system.

An integrated reform agenda

Beyond a summary of the major initiatives of the housing reform agenda, there is no discussion of the detailed and ongoing policy agenda of Housing Ministers through the Council of Australian Governments (COAG) reforms. In relation to the community housing sector, consideration should be given to how these reforms could be integrated with the proposals made in the Commission's report.

Although the report indicates that there has been insufficient evaluation to date, it concludes that the evidence that is available shows a 'clear picture' that the sector may not be cost effective. The case study concludes that there is no clear vision for the sector or its relationship with public housing authorities. There is no evidence to suggest that these conclusions are currently applicable in NSW, where the community housing strategy *Planning for the Future* sets clear directions for this sector over the next five years, and a single target over ten years to grow the sector to 30 000 properties.

Improving the effectiveness of direct government funding

There are recommendations in the report that relate to contracting arrangements with the not for profit sector and governmental funding obligations. Assistance to community housing providers is allocated subject to resource allocation policies that reflect strategic objectives for the social housing system in NSW. The procedures for the allocation of resources are in accordance with best practice for grant administration and competitive tendering is utilised where necessary to ensure the fair and transparent allocation of available resources.

Aboriginal community housing

It is noted that the Aboriginal community housing sector is not mentioned.