

INQUIRY INTO THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION EXPOSURE DRAFT BILLS

The Commonwealth has committed to a major reform agenda for the not-for-profit (NFP) sector. The centrepiece to this reform is the establishment of the Australian Charities and Not-for-profits Commission (ACNC), to commence on 1 October 2012.

This submission outlines the broader elements of the reform agenda to provide context to the House of Representatives Standing Committee on Economics' inquiry, given that the referred Bills and Explanatory Memorandum focus specifically on matters to establish the ACNC.

Role of the Office for the NFP Sector

In 2010, the Government established the Office for the Not-for-Profit Sector (the Office) within the Department of the Prime Minister and Cabinet for an initial period of three years to:

- drive and coordinate the NFP reform agenda within Government;
- implement the National Compact;
- chair the Interdepartmental Committee on NFP Reform (IDC) to ensure a whole-of-Government approach to implementing the reforms;
- provide secretariat support to the Not-For-Profit Sector Reform Council and associated working groups; and
- develop whole-of-Government volunteering, social investment and philanthropy policy.

The Not-for-Profit Reform Agenda

The Government committed to a reform agenda to strengthen the NFP sector, broadly reflecting the recommendations of the Productivity Commission's 2010 Research Report, *Contribution of the Not-for-Profit Sector* (PC Report). The PC Report was the fifth significant review calling for regulatory and taxation reform of the sector since 1995.

The broad aims of the reform agenda can be grouped into three key themes:

1. Improve the way Government and the NFP sector work together

- Implement the National Compact
- Streamline funding arrangements

2. Streamline and simplify regulation

- Establish the ACNC
- Regulatory reform
- Tax reform

3. Promote the long-term sustainability of the NFP sector

- Volunteering, philanthropy and social investment
- Workforce planning
- Measurement of the sector

Structures to progress reform

Given the scope of the NFP reform agenda, the Office was established within the Department in October 2010 for an initial period of three years, to drive and coordinate the reform agenda. Appropriate structures have been put in place to progress reforms across government, with the engagement of the sector. These structures include:

- *Not-For-Profit Sector Reform Council*

The Not-for-Profit Sector Reform Council (the Reform Council) provides advice from the sector to Government on the implementation of the reform agenda. The Reform Council's Terms of Reference and membership are attached.

- *Interdepartmental Committee on NFP Reform*

In recognition of the range of elements of the reform agenda, the IDC was established in February 2011, to assist the Office in their role of driving and coordinating the reform agenda within government. The IDC brings together key agencies working on the reform agenda to discuss the implementation of government commitments. The IDC is currently progressing work in a range of areas including, measurement and information,

non-financial performance reporting, grant funding agreements and reducing duplication.

- *Compact Advocates*

The Compact Advocates are deputy secretary level officials tasked with implementing the National Compact within their department's practices and are a key mechanism to ensure that the shared vision, purpose and principles of the Compact are adopted across Government.

- *ACNC Implementation Taskforce*

To support the introduction of the ACNC, an Implementation Taskforce was established from 1 July 2011 within Treasury. The ACNC Taskforce oversees the implementation of the ACNC, including the development of the general reporting framework and the public information portal.

Progress to date

Improve the way Government and the NFP sector work together

- Implement the National Compact
 - Streamline funding arrangements
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The National Compact

- After extensive consultation with the NFP sector, the Government launched the National Compact: *working together* in March 2010, committing all the Commonwealth portfolios to the Compact's shared vision, purpose and principles. The Compact is a framework for how the Commonwealth and the NFP sector will work together to improve social, civic, economic and environmental outcomes.
- To embed the principles of the National Compact, Compact Advocates have been appointed within all *Financial Management and Accountability Act 1997* (FMA) agencies with responsibility for supporting their agency's contribution to whole-of-Government processes to reduce red tape, streamline reporting requirements and implement priority actions under the National Compact. Advocates are at the deputy secretary level and their contact details are available at www.nationalcompact.gov.au.
- The Reform Council and the Government are working together to develop a Consultation Code. The Code will sit under the National Compact and provide a framework for how Government engages with the sector.

Streamline funding arrangements

- To streamline procurement contracting the Department of Finance and Deregulation (Finance) has introduced a simplified contract suite of documents for low-risk, low value procurements (under \$80,000). We are advised that over 70 per cent of FMA agencies are now using this documentation.
- Finance is now developing a model grant funding agreement template for low-risk grants. The Reform Council has been closely engaged in the development of the template. This template and associated documentation is currently being piloted by PM&C for grants under the Volunteer Management Program and the Attorney-General's Department is piloting the template on the Grants to Australian Organisations Program.
- The Office is also working with Finance and other FMA agencies to examine ways to streamline non-financial reporting requirements in grant funding agreements,

ensuring that this work takes into account broader whole-of-Government work such as the Commonwealth Financial Accountability Review.

Streamlining reporting

- A number of activities are underway to balance the Government's need for reliable data that supports policy objectives with the desire to reduce the reporting burden and free up resources to deliver services. The ACNC will improve regulation and reporting, in particular through a 'report once, use often' general reporting framework for charities. It is proposed that a *Charity Passport* will enable Commonwealth agencies to access basic information about charities that has been validated by the ACNC which fits with the 'report-once, use-often' principle.

National Standard Chart of Accounts

- From 1 July 2011, all jurisdictions including the Commonwealth, have accepted financial information from government-funded NFP organisations based on a National Standard Chart of Accounts (NSCOA). The NSCOA, is voluntary for NFP organisations improves consistency in financial reporting by NFP organisations to funding agencies and departments.
- The NSCOA provides a common approach to the capture of accounting information by community organisations for use by the NFPs, government agencies and other interested parties. It is a tool designed primarily for small to medium NFPs which typically do not have an accounting department or a sophisticated accounting system.

Progress to date

Streamline and simplify regulation

- Establish the ACNC
 - Regulatory reform
 - Tax reform
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Australian Charities and Not-for-Profits Commission

The 2011-12 Budget allocated \$53.6 million over four years for the establishment of the ACNC and related structural changes required to the Australian Taxation Office (ATO). The ACNC will:

- provide a central point for the registration of Australian charities;
- determine charitable status and public benevolent institution status;
- implement a 'report-once use-often' general reporting framework;
- collect reporting information from charities to build a public information portal over time for use by the Australian community; and
- provide education and guidance to the sector and the general public to promote compliance and transparency.

Consultation on the ACNC Bill

The ACNC Bill has undergone a significant consultation process with the sector. Treasury has carried out targeted consultation on the ACNC Bill through the Reform Council, the ATO's Charities Consultative Committee and the Clubs Consultative Forum, and more broadly through public consultation. The ACNC Taskforce also held face-to-face consultations on a general governance framework, financial reporting framework, the public information portal and the provision of education to the sector in all capital cities and Townsville. These consultations were supported by a joint roundtable with the sector hosted by Assistant Treasurer, the Hon David Bradbury MP and the Minister for Social Inclusion, the Hon Mark Butler MP, with sector representatives in March 2012.

The two-staged approach to implementation announced by the Government on 17 May 2012 will provide additional time for the sector, and state and territory governments to be consulted on the governance standards and the financial reporting framework. The sector has supported this approach and they have also indicated support for the ACNC to commence operations from October 2012. The sector has consistently stressed the need for a charity regulator, independent of the ATO, to streamline reporting and untangle the complex reporting requirements imposed by the Commonwealth, states and territories when operating across several jurisdictions.

Regulatory reform

- **Companies limited by guarantee**

The Government also announced in the 2011-12 Budget that it will undertake a review of the company limited by guarantee structure. This will help determine whether there are any barriers for NFP organisations using this structure.

- **Fundraising**

A significant challenge for the NFP sector is navigating the complex and inconsistent requirements under fundraising legislation across jurisdictions. The Government is working with states and territories, through COAG, towards agreeing a nationally consistent approach to fundraising regulation. The Assistant Treasurer released a discussion paper on charitable fundraising regulation reform for public comment on 12 February 2012 and closed on 5 April 2012.

- **Statutory definition of 'charity'**

From 1 July 2013, the Government will introduce a statutory definition of 'charity' to clarify 400 years of complex common law, align the definition with the values of modern society and reduce administrative costs for NFPs. The definition will be based on the recommendations of previous reviews and inquiries, most notably the 2001 Report of the *Inquiry into the Definition of Charities and Related Organisations*. The definition will also take into account recent judicial developments such as the *Aid/Watch* decision which established the principle that an institution that otherwise has a charitable purpose will be considered 'charitable' notwithstanding that it has "political objects" and carries out political activities.

Work with states and territories

- In announcing funding for the ACNC in the 2011-12 Budget, the Government noted that regulation of the charitable sector for Commonwealth purposes was a first step to getting the Commonwealth's house in order. However, it confirmed that the Commonwealth would continue working with the states and territories through COAG in order to achieve the most effective national regulation for the NFP sector.
- This work is going forward through the COAG NFP Reform Working Group, which reports to COAG through the Standing Council on Federal Financial Relations, and is chaired by the Commonwealth Treasury. The Office is an observer on this Working Group.
- COAG has tasked the Working Group with reviewing, developing and recommending NFP regulatory reform options to COAG including:

- o considering the adoption or application of a Commonwealth definition of 'charity';
- o a nationally consistent approach to fundraising regulation;
- o reviewing legal, governance and reporting regulation for the NFP sector; and
- o considering approaches to harmonise the test for determining non-charitable activities of charities.

Taxation reform

The Government is reforming legislation relating to tax concessions applying to the NFP sector. As announced in the 2011-12 Budget, better targeting of NFP tax concessions will ensure valuable tax concessions including income tax, fringe benefits tax, goods and services tax and deductible gift recipient status are targeted only at the activities NFP's undertake to further the purpose for which the concessions are provided. The Government will continue to consult with the NFP sector on the best way to implement these reforms and what guidance will be required.

The Office has been engaging with Treasury, which has lead responsibility for implementing the following taxation reforms, to support the NFP sector and improve its accountability and transparency:

- o a new regulatory framework to improve the integrity of public ancillary funds from 1 January 2012;
- o a NFP Sector Tax Concession Working Group under the Reform Council to consider whether there are better ways for the Government to deliver the current envelope of support provided to the NFP sector through tax concessions;
- o restating and standardising the special conditions for tax concession entities, including the 'in Australia' special conditions, to ensure tax concessions are used for the benefit of Australians; and
- o better targeting NFP tax concessions so they are used only for the charitable purposes for which they were granted.

Progress to date

Promote the long-term sustainability of the NFP sector

- Volunteering, philanthropy and social investment
 - Workforce planning
 - Measurement of the sector
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National Volunteering Strategy

- Volunteers make an extraordinary contribution to Australian society and provide much needed support to many NFP organisations. On 30 November 2011, the Government released the National Volunteering Strategy (NVS) to ensure Australia is well placed to encourage and support volunteering into the future.
- The NVS was developed in consultation with the NFP sector and sets out the Government's vision for the next 10 years which includes encouraging, supporting and properly recognising volunteers across the country. Through this strategy, the Government will acknowledge and celebrate the important contribution of volunteering to social inclusion and community wellbeing.
- In cooperation with the NFP sector and peak bodies that utilise volunteers, the Government is working to develop resources on national workplace and safety laws to help organisations understand and comply with their legal requirements. A Volunteer Workplace Health and Safety Working Group which includes Safe Work Australia, has been established under the Reform Council to oversee the development of practical resources to help volunteer organisations and volunteers understand and comply with their legal requirements under work health and safety laws and other intersecting laws.

Philanthropy

- To better support philanthropy and giving, the Government has implemented changes to public and private ancillary funds which are types of philanthropic foundations. These reforms improve the integrity of ancillary funds to increase public confidence in the philanthropic sector.

Social Investment

- The Government is exploring ways to increase private investment in the NFP sector through philanthropy and innovative social financing. By facilitating the growth of social investment and access to capital markets for NFP organisations, the NFP sector will be better equipped to meet complex social challenges in the short and long term.

- The Australian Parliament's Senate Economics References Committee has conducted an inquiry into mechanisms and options for the development of a capital market for social economy entities and the development of social impact investment markets more generally. The Government has considered the Committee's report which was released in November 2011. The Government's response was released in July 2012 and is available from www.dpmc.gov.au.
- *Social Enterprise Development and Investment Fund*
In order to improve access to finance for social enterprises, the Government provided seed funding to establish the Social Enterprise Development and Investment Fund (SEDIF). Foresters Community Finance and Social Enterprise Finance Australia have been selected as the SEDIF funds managers to offer a range of tailored loans and support to new and established social enterprises. The Government's seed funding has been matched by corporate and private investors, taking the total funds under management to \$32 million.

Workforce Planning

- The Reform Council formed the Future NFP Workforce Working Group to examine current workforce pressures, consider how these could be managed and provide advice to Government.

Measuring the Sector

- The Government has invested \$1.7 million in Australian Bureau of Statistics to produce a Non-Profit Institutions Satellite Account for the 2012-13 financial year to provide an updated picture of the size, value, composition and economic importance of the NFP sector and contribute to the development of community related policies.