

Chapter 2

Australia's not-for-profit sector and recent reviews

2.1 This chapter presents an overview of the not-for-profit sector in Australia and recent reviews of it. While these reviews have provided useful insights, quantifying the sector remains difficult.

The estimated size of the sector and the value of tax concessions

2.2 Little is known about the size of the not-for-profit sector in Australia. A survey of not-for-profit organisations published by the Australian Bureau of Statistics (ABS) in 2009 was the first time it had surveyed this sector of the economy (Table 2.1).

Table 2.1: Statistics on selected not-for-profit organisations: June 2007

	Number of organisations (thousands)	Employees (thousands)	Volunteers (thousands)	Income (billions)	of which: donations etc ^a (billions)	Expenses (billions)
Religion	8.8	41	470	4	1.4	3
Philanthropic etc ^b	7.3	110	361	11	3.2	10
Culture & recreation	8.3	103	576	13	1.2	12
Education & research	5.7	218	204	16	d	15
Hospitals	0.1	56	7	5	d	5
Health	0.8	100	62	6	d	5
Social services	5.8	222	255	12	d	10
Unions & associations ^c	2.0	22	56	4	d	4
Other	2.2	18	193	6	d	6
Total	41.0	890	2182	76	7.2	70

a. Donations, sponsorship and fundraising. b. Environment, development, housing, employment, law, philanthropic, international. c. Business and professional associations and unions. d. Not separately identified.

Source: Secretariat, based on data from ABS, *Not-for-profit Organisations, Australia, 2006-07*, Cat. No. 8106.0, 12 June 2009.

2.3 The ABS collected data from almost 60,000 not-for-profit entities in a national accounting exercise which found that the sector had income of \$77 billion and added more than \$40 billion (over 4 per cent) to annual 'value' or GDP in 2006-07. Within this, religions were identified as having income of over \$3 billion, but 'charities' were not separately identified.¹

2.4 In the 2009 *Tax Expenditures Statement*, the value of the revenue forgone through the income tax exemption for religious, scientific, charitable or public educational institutions and funds (expenditure item B23) was stated as 'unquantifiable'.² Treasury put the order of magnitude as over \$1 billion a year,³ one of the largest of the unquantifiable expenditures.⁴

2.5 The Productivity Commission commented:

...the value of tax concessions given to the NFP sector and donors of deductible gifts is estimated to be at least \$4 billion in 2008-09 for those concessions which have been quantified. However, there are a number of significant concessions in all jurisdictions that have not been quantified which, if included, could feasibly double the \$4 billion estimate.⁵

Committee view

2.6 The Committee considers that where a public policy decision has been made to direct public funding to a particular sector of the community, in all cases, the government should periodically review those decisions to ensure that the policy aims being supported are in fact being realised through ongoing and considered debate of issues including what is taxed and what is not and the broader question of how government should support different sectors of the economy:

- through grants and one-off payments that require parliamentary consideration; or
- through the tax system which although not enabling the Government to control the amount of funding received allows the community to have a more direct involvement in the decision making process by choosing to whom they will lend their financial support.

2.7 The Committee is of the view that government should be able to clearly identify where funds are being directed and the quantity of those funds in the not-for-profit sector.

1 ABS, *Australian National Accounts: Non-profit Institutions Satellite Account*, Cat. No. 5256.0, 18 September 2009.

2 Treasury, *2009 Tax Expenditures Statement*, January 2010, p. 74.

3 Treasury, *2009 Tax Expenditures Statement*, January 2010, p. 29.

4 Treasury, *2009 Tax Expenditures Statement*, January 2010, p. 6.

5 Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010, p. E7.

Recent reviews

2.8 The not-for-profit sector, particularly religious and charitable institutions, has been the subject of four inquiries over the past decade.

2.9 Each inquiry sought to provide government with a better understanding of the sector and its operation but although the need for change was consistently identified, and in particular, the establishment of a commission specific to the industry was suggested, consultation with the sector has slowed change and lack of information has impeded progress.

(1) Inquiry into the definition of charities and related organisations

2.10 This inquiry, established to consider whether the common law approach to defining a charity could be improved to serve the interests of charities, government and the public better,⁶ made 27 recommendations and noted that although the environment in which charities and related entities operate was changing, the continuing reliance on the common law meaning of charity was affecting the ability of the entities to respond to the changes.⁷ The Committee recommended:

- the introduction of a statutory definition of charitable purpose;
- that 'religion' be defined, requiring it to be based on the principles established by the High Court in its 1983 decision involving *The Church of the New Faith v The Commissioner of Pay-Roll Tax (Vic)*; and
- that the Government, with the agreement of all of the states and territories, establish an independent administrative body for charities and related entities.⁸ (An extract of that Report's recommendations is attached at Appendix 3.)

2.11 In response to the inquiry the then Government announced that it would enact legislation which set out a definition of charity incorporating a majority of the Inquiry's recommendations for the definition.⁹ After public consultation the Government abandoned the bill.¹⁰ The law was however amended to give effect to one of the report's recommendations: that the common law meaning of charitable purpose be extended to include not-for-profit child care providers, certain self-help groups and certain closed and contemplative religious orders.¹¹

6 Treasury, *Inquiry into the Definition of Charities and Related Organisations*, 2001, pp 21-22.

7 Treasury, *Inquiry into the Definition of Charities and Related Organisations*, 2001, p. 4.

8 Treasury, *Inquiry into the Definition of Charities and Related Organisations*, 2001, pp 15-18.

9 The Hon Peter Costello, Commonwealth Treasurer, Government Response to Charities Definition Inquiry, 29 August 2001, Press Release No. 49, p. 1.

10 The Board of Taxation, *Consultation on the Definition of Charity—A Report to the Treasurer, 2003*, Chapter 2, pp 10-11. www.taxboard.gov.au viewed 15 July 2010.

11 Treasury, *Inquiry into the Definition of Charities and Related Organisations*, 2001, p. 14.

(2) Senate Economics Committee—Disclosure regimes for charities and not-for-profit organisations

2.12 The Senate requested that the Committee undertake an examination of the not-for-profit sector in Australia with reference to:

- the relevance and appropriateness of the sector's disclosure regimes;
- models of regulation and legal forms that would improve governance and management of these entities; and
- other measures that would assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.¹²

2.13 Like the 2001 inquiry, the report tabled identified the need for broad-reaching reform to improve transparency and accountability and simplify the tax laws relevant to the sector.

2.14 Like the earlier inquiry, it again called for the implementation of a single independent national regulator for the sector. (An extract of the recommendations of the Committee in that report are detailed in Appendix 4.)

(3) Productivity Commission – The Contribution of the Not-for-Profit Sector

2.15 In March 2009, the Government requested that the Productivity Commission study the not-for-profit sector to assess its contribution to the wider economy and impediments to the sector's continued development.¹³ The very broad terms of reference are in Appendix 5.

2.16 In its report, published in January 2010, the Productivity Commission identified that wide ranging reform was needed and made 38 recommendations, many consistent with the recommendations of the preceding reviews and aimed at achieving the desired regulatory reform.

2.17 The Productivity Commission also again called for the establishment of a new independent national regulator.¹⁴ In addition, it also suggested:

- a new legal form for not-for-profit entities; and
- the introduction of a statutory definition of charitable purpose.¹⁵

12 Senate Standing Committee on Economics, *Disclosure regimes for charities and not-for-profit organisations*, December 2008, p. 5.

13 Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010, p. iii.

14 Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010, pp 113, 117, 119, 144, 148-152 and 156.

15 Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010, pp 113, 117, 119, 144, 148-152 and 156.

(4) Australia's Future Tax System (The Henry review)

2.18 In its 2008-09 Federal Budget the Government announced that it would initiate a comprehensive review of Australia's tax system.¹⁶

2.19 In December 2009, the Secretary to the Treasury, and Chair of the review panel Dr Ken Henry, delivered the *Australia's Future Tax System -- Report to the Treasurer* (the Henry Review). Among the comprehensive analysis and recommendations of the report the review group considered the taxation arrangements specific to the not-for-profit sector.

2.20 In noting the sector's contribution to the community and identifying that much of the support it receives occurs indirectly through tax concessions, the report noted the complexity of the existing tax system.¹⁷ The report also commented on the inconsistent regulatory regimes faced by these organisations at the state, territory and local government levels.

2.21 The review panel recommended the establishment of a national charities commission to monitor, regulate and provide advice to the sector, suggesting that such a body would address the issues that prove problematic to the sector.¹⁸

Committee view

2.22 The Committee notes the consistent recommendations of the four previous inquiries, particularly the call to establish a national independent commission to oversee all aspects of the not-for-profit sector. The Committee believes that the absence of a national commission has led to insufficient information being available on the sector, difficulty in consultation and consequently delays in reform.

16 *Australia's Future Tax System—Report to the Treasurer, Part One—Overview*, December 2009, pp v–vii.

17 *Australia's Future Tax System—Report to the Treasurer, Part Two—Detailed Analysis*, December 2009, p. 205.

18 *Australia's Future Tax System—Report to the Treasurer, Part Two—Detailed Analysis*, December 2009, p. 212.

