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Submission to Productivity Commission Contribution of the Not For Profit Sector - Draft research report

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

Summary

The Anglican Church Diocese of Sydney sees merit in the approach taken by the Commission and is supportive of most of the recommendations contained in the draft report.

DRAFT RECOMMENDATION	COMMENT
5.1	We support this recommendation.
5.2	We support this recommendation, but with a qualification and further recommendation.
5.3	We support this recommendation, but with a qualification and further recommendation.
5.4	We support this recommendation, but with a qualification.
6.1	We support this recommendation, but with a qualification.
6.2	We support this recommendation, but with a qualification.
6.3	We do not support this recommendation.
6.4	We support this recommendation, but with a qualification and further recommendation.
7.1	We support this recommendation.
7.2	We support this recommendation, but with a qualification.
7.3	We support this recommendation.
7.4	We support this recommendation, but with a qualification.
9.1	We support this recommendation, but with a qualification.
9.2	We support this recommendation.
9.3	We support this recommendation.
10.1	We support this recommendation.
10.2	We support this recommendation.
10.3	We support this recommendation.
10.4	We support this recommendation, but with a qualification.
11.1	We support this recommendation.
11.2	We support this recommendation, but with a qualification.
11.3	We support this recommendation.
11.4	We support this recommendation.
12.1	We do not support this recommendation in its current form and have proposed an alternative.
12.2	We support this recommendation.
12.3	We do not support this recommendation in its current form and have proposed amendments.
12.4	We support this recommendation, but with a qualification.
12.5	We support this recommendation.
12.6	We support this recommendation, but with a qualification.
12.7	We do not support this recommendation in its current form and have proposed an alternative to strengthen the recommendation.
new 12.8	We support this recommendation but propose it be separated from 12.7.
new 12.9	We have proposed an additional recommendation in this area.
13.1	We support this recommendation, but with a qualification.
13.2	We support this recommendation.

Purpose of this submission

The name of our organisation is the Anglican Church Diocese of Sydney. Our agencies provide a wide range of programs including social welfare, education, health and ageing, youth, and homelessness. We made an initial submission (recorded on the Commission's website as submission 82) in response to the Commission's Issues Paper dated April 2009.

The Commission has now invited interested parties to examine the draft research report released on 14 October 2009 and make written submissions to the Commission.

We are generally supportive of the approach taken by the Commission. However, we have taken this opportunity to address each of the recommendations in the draft research report in order to indicate more specifically those matters on which we agree with the draft recommendations and those where we have some concerns or wish to bring other factors to the attention of the Commission as it considers its final recommendations.

For this purpose we have arranged our comments to correspond with the format of the Commission's draft recommendations.

Building a better knowledge base

DRAFT RECOMMENDATION 5.1

We support this recommendation.

DRAFT RECOMMENDATION 5.2

We support this recommendation, however we note the difficulty of achieving a common framework given the diversity in the not for profit sector.

Our experience suggests that the use of evaluation to help identify the contributions and shape data collections is not without its own problems –

- there are many kinds of evaluations and there is no agreed best practice in the area,
- evaluation is costly and can be resource intensive,
- there is a lack of expertise in most organisations to carry out robust evaluation,
- larger organisations would be in a better position to carry out such robust evaluation, and inform the rest of the sector,
- funding should not be made contingent on evaluation being carried out; evaluation should have the goal of improving not for profits' service delivery and enriching the whole sector,
- it is not clear who will bear the cost of such evaluation.

Evaluation must not become another kind of compliance burden. The size and nature of programs must be considered in determining the scale of evaluation required.

We recommend therefore that Government pay for the evaluation to be carried out within program budgets, and that mandatory evaluation only be required for programs above a certain dollar value.

DRAFT RECOMMENDATION 5.3

We support this recommendation, however we note there are very considerable practical difficulties to be overcome if the development of a common measurement framework for reporting and evaluation and a standard chart of accounts are not to result in additional compliance costs for the not for profit organisation.

Our experience suggests that these difficulties should not be underestimated. Frequently similar projects within smaller and less diverse populations have failed to deliver the promised benefits and in many cases have added to compliance costs. Indeed they have often resulted in the development of 2 systems – one to deliver the information management required to manage the operation and another imposed to meet government requirements.

We support the return of information generated through the reporting process to the service providers.

We recommend that the scope of the information returned be extended to include all types of data gathering done on behalf of Government, including FRSP OnLine. We recommend that the raw data, as well as the reports, should be made available to the service providers in an easy-to-read format.

DRAFT RECOMMENDATION 5.4

We generally support this recommendation, however while we recognise that the establishment of a Centre for Community Service Effectiveness would meet a need within the sector to promote 'better practice' approaches, we would question whether it may be more cost effective to make use of existing tertiary research centres and the ARC grants structure.

Smarter regulation of the not for profit sector

DRAFT RECOMMENDATION 6.1

We support this recommendation on the understanding that the new legal structure is –

- (a) an additional option for those not for profits seeking to incorporate, and
- (b) is not (and does not become) an actual or de facto requirement to access Commonwealth tax concessions or other benefits.

DRAFT RECOMMENDATION 6.2

We support this recommendation, however as noted in relation to recommendation 5.3, we are concerned that the very considerable practical difficulties associated with the development of a standard chart of accounts may result in additional compliance costs for not for profit organisations.

DRAFT RECOMMENDATION 6.3

We do not support a statutory definition of charity because we consider that the common law understanding of charity, as developed by the courts, continues to provide both certainty and an appropriate degree of adaptability in understanding charitable purpose in a contemporary context. The recent decision of the High Court in *Word Investments* is a case on point.

DRAFT RECOMMENDATION 6.4

We generally support this recommendation, subject to the following comments.

Firstly, we support all not for profits obtaining relevant Commonwealth tax concessions through registration and endorsement by the proposed new Registrar, rather than through the ATO.

Secondly, it would be highly desirable for any additional regulatory function of the proposed new Registrar in respect to Commonwealth incorporated associations, companies limited by guarantee and Indigenous Corporations to be exercised in a way which minimises the need for concurrent or residual regulation by existing regulators such as ASIC.

Thirdly, any not for profit which is not regulated by the proposed new Registrar should not be placed at a disadvantage in terms of accessing Commonwealth benefits by reason only of such non-regulation. If, contrary to this outcome, regulation is seen as an effective prerequisite to accessing certain Commonwealth benefits, then it should be possible for any not for profit to 'opt-in' to the new regulatory regime.

The Commission has also sought comment 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.

We recommend that the proposed new Registrar be a separate agency because the roles and culture required are quite different. We would hope the proposed new Registrar's focus would be on capacity building and providing assistance to the not for profit sector.

Realising funding opportunities for the sector

DRAFT RECOMMENDATION 7.1

We support this recommendation.

DRAFT RECOMMENDATION 7.2

We support this recommendation, on the understanding that the Commission is recommending that the proposed new Registrar's responsibility to "register and endorse not for profits for Commonwealth tax concession status" will effectively encompass all unincorporated organisations and other entities operating in the not for profit sector. We note that if this understanding is correct the proposed new Registrar will effectively become the only mechanism by which not for profits can gain access to Commonwealth tax concessions.

DRAFT RECOMMENDATION 7.3

We support this recommendation.

DRAFT RECOMMENDATION 7.4

We support this recommendation.

The Commission's draft report notes that one of the main constraints on access to capital is "inadequate and insecure Government funding" (page 7.35). We note for example that Government capital funding has not kept pace with need in the aged care sector. It could be argued therefore that the adequacy of grant formulae needs to be addressed.

Following the Global Financial Crisis, another constraint is the loan to valuation ratios being adopted by lenders. The effect has been that providers now have to use more of their own capital with a smaller proportion of borrowed funds, with the result that it is now more difficult to fund new projects.

Having access to a range of different types of intermediaries to facilitate not for profits' access to capital is potentially a good thing, as a way of partially compensating for a lack of Government funding and constraints on borrowing.

Facilitating social innovation and sector development

DRAFT RECOMMENDATION 9.1

We support this recommendation, although it is unclear how Social Innovation Funds would be funded and to what extent the burden would fall on not for profits.

DRAFT RECOMMENDATION 9.2

We support this recommendation.

DRAFT RECOMMENDATION 9.3

We support this recommendation.

Sustaining the not for profit workforce

DRAFT RECOMMENDATION 10.1

We support this recommendation, on the understanding that the 'Working with Vulnerable People Checks' would be multi-purpose as well as portable.

DRAFT RECOMMENDATION 10.2

We support this recommendation.

DRAFT RECOMMENDATION 10.3

We support this recommendation.

DRAFT RECOMMENDATION 10.4

We support this recommendation, although we would not want the development of training in governance to become the forerunner to the imposition of further governance regulation.

Improving the effectiveness of direct government funding

DRAFT RECOMMENDATION 11.1

We support this recommendation.

DRAFT RECOMMENDATION 11.2

We support this recommendation so long as the independent cost assessments provide appropriately for variations in contexts (eg urban vs rural) and allow for variation in the different structures and resources of organisations. Clearly, a 'one size fits all' approach to the cost assessments may result in a price below the actual cost of delivery of that service in a high cost region or context.

Furthermore, if the results of a previous independent cost assessment are to remain useful over time an appropriate indexing factor needs to be applied, and in this respect the movement in CPI does not necessarily cover actual cost increases.

DRAFT RECOMMENDATION 11.3

We support this recommendation.

DRAFT RECOMMENDATION 11.4

We support this recommendation.

Removing impediments to better value government funded services

DRAFT RECOMMENDATION 12.1

We do not support this recommendation in its current form.

We recommend that generally the purchaser-provider model should remain the preferred approach.

We are concerned that there are a host of issues surrounding the 'client-directed service delivery model' for which it may not be possible to find satisfactory solutions. For example –

- While many people will be willing to assume responsibility to find, hire and manage a service which suits them, there are many other clients for whom this responsibility will be an added burden. There is a danger that by cutting out service providers, governments will shift the administrative cost and responsibilities to clients.
- Not all people have the literacy, experience and help needed to assume full autonomy – some groups such as people from indigenous and culturally and linguistically diverse backgrounds may be further disadvantaged.
- 'Who is the client?' becomes an issue where there is both a carer and an adult with a disability. Where there is conflict between the two, who will hold the funds and make decisions for adults with a disability?

DRAFT RECOMMENDATION 12.2

We support this recommendation.

DRAFT RECOMMENDATION 12.3

We do not support this recommendation for 2 reasons –

- the concept of ‘value for money’ is too narrow a measure of the benefit to the community, and
- the categorising of the wider, intangible benefits as “spillover” is inappropriate.

It is important to recognise that programs may deliver significant indirect benefits such as community development and the creation of networks, in addition to the direct benefits for clients and their families. However, such indirect benefits are often intangible and therefore cannot be quantified in monetary terms.

Furthermore, in some cases the wider indirect community benefits may be the core objective of the program.

We recommend that the phrase “obtaining the best value for money for the community” should be replaced with “obtaining the best benefit for the community” and the phrase “In determining value for money” should be replaced with “In determining benefit”.

We also recommend that the phrase “any spillover (or wider) benefits” should be replaced with “any indirect or wider benefits”.

DRAFT RECOMMENDATION 12.4

We generally support this recommendation although we are concerned that in its current form it may not be strong enough to discourage inappropriate use of the lead agency model to shift reporting responsibilities, and thus risk, from government to lead agencies.

DRAFT RECOMMENDATION 12.5

We support this recommendation.

DRAFT RECOMMENDATION 12.6

We support this recommendation, although we note that service providers need to be compensated for the risk they accept.

DRAFT RECOMMENDATION 12.7

We believe this recommendation understates the importance and scope of reforms needed to streamline tendering, contracting, reporting and acquittal requirements.

The Commission’s draft report represents a major opportunity for this important issue to be addressed by making strong and comprehensive recommendations to government. The Commission found that –

Arguably, the strongest message from the NFP sector in relation to government funded services is that the costs associated with tendering, contractual and reporting requirements have become excessive. Consequently, many community organisations are concerned that managing the administrative burden of having to tender and re-tender and comply with contractual and reporting obligations, has become ‘core business’ to the detriment of their ability to deliver services to the community
(Draft report, p. 12.23)

The single recommendation in the draft report should be expanded into several recommendations, covering the need to –

- Streamline funding applications and tenders to provide common administrative requirements:** Most of the State and Federal Government funding available to the not for profit sector is accessed via a tender process. Each tender is specific and different from every other tender – with different criteria and demands. The process of tender application is extremely time consuming. Streamlining the process would reduce the administrative and resource burden on agencies and also provide a more equitable tender environment. Currently small agencies have difficulty finding the resources to commit to the tender writing process. However, if they do not comply with the process their programs will no longer be funded.
- Improve transparency and incorporate feedback from not for profits in the development of contracts:** The language of Government contracts with service providers is often confusing, as those drafting contracts are often quite divorced from service delivery issues. Government at all levels could improve their transparency in the development of these contracts and ask for feedback from the sector on any concerns about contractual conditions before contracts are finalised. The process to date has

generally been that the service providers are offered a particular contract format (sometimes even without the applicable conditions) on a 'take it or leave it' basis.

- (c) **Remove multiple contractual and reporting arrangements across departments:** Every Government Department has a different funding agreement or contract with different accountability requirements. This creates issues in terms of multiple reporting and is extremely resource intensive requiring considerable commitment of staff time by the not for profit. In general, having one simplified contract with any government department (such as FRSP services) with one end date and simplified reporting requirements would be helpful. This would also reduce the auditing requirements.
- (d) **Implement a common acquittals process, with acquittals limited to the end of the contract term:** The acquittals process is complex and inconsistent across programs. Regardless of the length of the contract (1-5 years) acquittals have to occur annually. If there is a surplus, which is usual in the first year with set up etc, the not for profit has to apply to retain the surplus. Sometimes it can take 6 months or more before the result of the application is made known, which then puts pressure on the not for profit to spend any surplus before the end of the next financial year. It would be administratively easier if acquittals were not required until the end of the contract period. The not for profit could still supply an annual statement for accountability.
- (e) **Standardise reporting requirements for Federal and State Government departments:** With different funding types there is no consistent approach between the State and Federal Government in relation to reporting service delivery outputs – the State Home and Community Care (HACC) programs are reported quarterly and the Commonwealth National Respite Carer Program (NRCP) programs are reported half yearly. HACC goes through an integrated monitoring process and the Commonwealth goes through a quality reporting process. The two processes are different in that one requires the preparation of a self assessment desktop audit and the other conducts workplace assessment. Some service providers are responsible for several programs which each include the two types of funding streams. It would be helpful, therefore, if all governments adopted a more co-ordinated approach using one monitoring process.
- (f) **Provide service providers with access to their own data to avoid costly double data entry:** Each government funded program has its own reporting requirement and separate database system. This requires data entry at the service end but provides minimal reporting back to the services. It is not possible to access the program data once it is entered in either the State or Federal Government database, and so a system of double entry of data is required – which is extremely time consuming and inefficient. It is therefore recommended that Government review the current data capture system for funded programs with the aim of providing maximum data access to services for their own reporting and internal evaluation purposes.
- (g) **Consolidate government databases:** Currently a significant amount of data is being captured by governments in various databases for various programs across the country. However there appears to be no intention to consolidate and analyse this data for high level reporting back to the sector on performance and outcomes. There is a consistent focus by government on inputs into the programs but very little reporting of outputs or outcomes back to the sector. Benchmarking and regular reviews of performance in key funding areas would be possible if such global data analysis was carried out.

In addition, the draft report does not appear to address issues connected with accreditation, which were also identified as costly and time consuming because of the differing requirements of various Government Departments. Furthermore, the timing of accreditation processes and new tenders can overlap, making it very difficult for not for profit agencies to meet the requirements of both.

We therefore recommend the following 3 recommendations in place of Draft Recommendation 12.7 –

NEW 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. In particular, Federal and State Governments should:

- ***streamline funding applications and tenders to provide common administrative requirements across different departments and levels of government***
- ***strive for transparency in the development of contracts, including feedback from not for profits to improve the drafting of contracts and address any concerns about contractual conditions before contracts are finalised***
- ***standardise the reporting requirements including the approach to and frequency of reporting***

- **remove multiple contractual and reporting arrangements across departments and agree a single simplified contract with simplified reporting requirements**
- **introduce a common acquittals process, with acquittals limited to the end of the contract term**
- **standardise accreditation processes and avoid any overlap with the timeframes for tenders.**

NEW RECOMMENDATION 12.8

To reduce the current need to verify the provider's corporate or financial health on multiple occasions, even within the same agency, the review of government tendering and contracting requirements should include consideration of:

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

NEW RECOMMENDATION 12.9

Where mandatory data collection is required through on-line data collection systems, all Australian governments should undertake to provide copies of such databases to the service providers, to avoid double data entry by the service providers. Government databases for the sector should be consolidated to provide high level analysis and reporting, both at the service level and across the sector.

Building stronger, more effective relationships for the future

DRAFT RECOMMENDATION 13.1

We support this recommendation, although we would want to see these compacts based on the streamlined tendering, contracting, reporting and acquittal requirements resulting from the adoption of the new recommendations 12.7, 12.8 & 12.9 detailed above.

DRAFT RECOMMENDATION 13.2

We support this recommendation.

For and on behalf of the Anglican Church Diocese of Sydney

ROBERT WICKS

Diocesan Secretary

24 November 2009