



ACOSS Submission | November 2009

**Australian
Council of
Social Service**

Submission to the Productivity Commission

Response to the Draft Research Report: Contribution of the Not for Profit Sector

ACOSS, 24 November 2009

Introductory comments

ACOSS strongly welcomes the Productivity Commission Draft Research Report, its comprehensive and considered approach to the Inquiry and many of the recommendations contained within it. We agree that the lack of a central place to drive structural reform has contributed to the failure to achieve this to date, despite more than 15 years of inquiries and recommendations. Consequently, we urge federal and state governments to implement this reform agenda as a key priority commencing in 2010.

In its original submission to this Inquiry (June 2009), ACOSS outlined 10 features and benefits of a strong, diverse and effective not for profit community services and welfare sector (these are reproduced in Appendix 1). We agree with the Draft Report that there are spill over, additional or external benefits to much of what is done by the not for profit sector, because of the inherent values and features of the sector. However we contend there are also *direct benefits* from the research, policy development, education and advocacy work undertaken by much of the sector and that this needs to be acknowledged in any analysis of its contribution. Often this work draws from experience of service delivery on the ground where gaps or unintended consequences become evident. Experience from the ground also contributes to the development of policies to address the underlying causes of disadvantage or lack of opportunity. Advocacy around these policy changes are then undertaken directly or through representative structures such as peak bodies. Much of this work is at the heart of the community services and welfare not for profit sector and is a vital component of our democracy.

The extent to which the Productivity Commission has listened to the community services and welfare sector is reflected throughout the Draft Report. We also welcome the survey of government agencies across jurisdictions undertaken by the Productivity Commission and look forward to seeing detailed responses in the final Report. The relationship between government and the sector is a major issue that was raised throughout the consultations conducted by ACOSS with its membership as part of this Inquiry. ACOSS welcomes recent developments from the Commonwealth Government in the interests of an improved relationship, notably the identification of eight priority areas for short term action in the latest National Compact consultation paper. We endorse these eight areas, which reflect the proposals we made in our June submission to the Productivity Commission's Inquiry.

We also note the Prime Minister's announcement of an Inquiry into Reform of the Australian Government Administration and comments made Prime Minister and Cabinet Departmental Secretary Terry Moran, in a speech on 28 October: *"the Australian Government is saying very strongly and with conviction that collaboration and cooperation with community organisations is no longer a nice extra. Involving those beyond government is absolutely essential to our work. Working together will empower us to respond to citizens' diverse and fluid expectations more effectively and efficiently than either the community sector or government could alone."*

We look forward to progress in the relationship between governments and the sector and we see the Productivity Commission's recommendations as an important step in this vein.

1. Building a Better Knowledge Base

Response to Recommendations and questions posed

ACOSS supports the development of frameworks and performance measures to better understand outcomes and impacts and which includes and values the contribution of early and preventive interventions. As stated in our June submission, this is an important and significant component of the work undertaken by this sector and we reiterate the need to include early intervention and prevention in the proposed common framework for measuring the contribution of the not for profit sector. (Appendix 2 provides more detail on this in an excerpt from our original submission.)

We welcome the Productivity Commission's support for the common framework which we proposed in our original submission and reiterate that this should draw from recent work within the community services and welfare sector. This includes work by Mission Australia, The Smith Family, the National Association of Community Legal Centres and The Benevolent Society; as well as effective practices in the Australian agencies working in the international NGO sector.

We also reiterate the recommendations in our original submission regarding the Australian Bureau of Statistics.

- That the ABS increase its sample size significantly to allow it to produce a breakdown of the nine or 12 (preferably 12) ICNPO categories into sub categories and by State and Territory.
- That the ABS undertake the Not for Profit Organisations Survey (with the increased sample size) every 3 years and also release the data in the Australian and New Zealand Standard Industrial Classification (ANZSIC) Class.
- That the Federal Government specifically tie funds to the ABS to undertake the above.
- That the Community Services Industry Survey be undertaken at five-year intervals.

2. Smarter regulation of the not for profit sector

Response to Recommendations and questions posed

ACOSS reiterates our support for a single national legislative framework for the incorporation and regulation of all not for profit organisations. For this reason, we do not agree with the Productivity Commission's draft recommendation to establish a new national Associations Act *in addition* to the national Corporations Act and state and territory Associations Incorporation Acts. This would mean the addition of a third structure, on top of existing structures. We do not believe that it would reduce the complexity of regulation in the system, nor would it address the inappropriateness of the Corporations Act for not for profit organisations. As stated in our June submission we believe it is preferable to establish a national Associations Act that would replace the current function of the Corporations Act and would require states to cede their powers to the national structure. An Associations Act would include different levels of reporting, depending on an organisations' size, turnover, staff etc; but would allow organisations to remain in the same system as they evolve. The transaction costs of migrating all organisations to a national system can be handled through an automatic transfer with a period of time (for example 12 months) to

allow organisations to adjust their governance and reporting structures to meet the requirements of the new body. A similar procedure was followed when corporations law transferred from State and Territory jurisdictions to form the national Corporations Act.

ACOSS supports the COAG Business Regulation and Competition Working Group being charged with harmonising fundraising regulation; that a standardised Chart of Accounts be adopted by all government agencies including in the administration of external contracts and grants; and that the Standard Business Reporting initiative be expanded to not for profits.

We support appointing a new independent National Registrar for Community and Charitable Purpose Organisations and the functions ascribed to it in the Draft Report. We agree with the view held by the Productivity Commission that sector development and capacity building should not be included within the role of a National Registrar. The Registrar must be located independently from the Australian Taxation Office, as recommended by the 2001 Definitions of Charity Inquiry. While we believe it should be independent of ASIC, this does not preclude a sub-contractual arrangement of office functions with ASIC to minimise set-up and operating costs.

3. Realising funding opportunities for the sector

Response to Recommendations and questions posed

ACOSS strongly supports the recommendation to implement the definitions recommended by the 2001 Inquiry into the Definitions of Charity, including simple clear points on advocacy. We note that this included a recommendation that the outdated Public Benevolent Institutions definition be replaced with *Benevolent Charity*, “a charity whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs.” This would incorporate organisations who worked to prevent disadvantage.

ACOSS does not accept the Productivity Commission Draft Report’s recommendations that all current taxation benefits accruing to PBI (including Deductible Gift Recipient, DGR status) should be extended to all charitable institutions and charitable funds. Rather we believe it is important to restrict the most generous tax concessions to those which meet the Benevolent Charity definition. Our policy in this area has been clear since 2003 when we responded to draft legislation on definitions of charity. There is a danger that extending all tax concessions to the broader group will be extremely costly and will deter government from any modernising of the outdated charity definition.

ACOSS reiterates the view from its June submission that the overarching framework needs to be set before taxation matters are considered and we would very much like to contribute to further detailed work in this area. We note the Productivity Commission has included a chapter on competitive neutrality which we believe requires some comment. It is important to clarify that the current tax concessions, especially the Fringe Benefit Tax (FBT) concession available to some not for profits, are currently used to partially address the lower wages paid across the sector, given inadequate funding and resource constraints faced by many not for profit agencies (which are acknowledged throughout the Draft Report). Any changes to FBT concessions would need to be carefully considered to ensure that there is no adverse impact on the quality of services provided. Compensation

arrangements would be extremely complex, given that the range of organisations which benefit from FBT are funded through diverse sources and are not limited to government grants or contracts alone. Any further work on reform of tax concessions must proceed on the principles that, within the not for profit community services and welfare sector, no clients or beneficiaries should be worse off; no employees should be worse off; and no organisations should be worse off.

4. Facilitating social innovation and sector development

Response to Recommendations and questions posed

- ACOSS believes that a move toward a more balanced and involved relationship between governments and the community services and welfare sector will help innovation to flourish, as discussed in our original submission.
- Reform of contracting approaches and program evaluation which uses outcomes and impacts rather than inputs and throughputs will also significantly increase innovation.
- Governments should dedicate a percentage of program funding (possibly 1%) within line Departments to an innovation fund or pool. For example the Department of Education, Employment and Workplace Relations has recently established an Innovation Fund to which it is allocating \$40m to its Job Services Australia contracted services for the unemployed (approximately 0.8% of the total \$4.8 billion over three years). Another option would be to allocate a percentage of the Future Fund for innovation around specific issues.
- However different models for program design and delivery should be included, rather than only relying on a tendered purchaser-provider model. These innovation funds could also work across line Departments and involve collaboration between federal, state and not for profit agencies, depending on the nature of the issue. An innovation fund or pool would have clear objectives and outcomes but would enable considerable flexibility around how these were achieved. It would need to factor in a percentage for failure, akin to the price we expect to pay in science, health and business to get leaps of innovation which may ultimately pay off many times over.
- Innovative projects would generally be run over a three to five year time frame, rather than one or two years. There also needs to be recognition that innovative projects, once evaluated and deemed to be successful, should influence or become mainstream policies and programs.
- We welcome the recommendation to establish a joint Working Party, including representatives of the not for profit sector, to consider low interest loans or no interest loans for capital infrastructure for community service and welfare organisations.

5. Sustaining the not for profit workforce

Response to Recommendations and questions posed

ACOSS strongly welcomes the elevation of workforce issues to a separate set of recommendations and particularly endorses the recommendation that “Australian governments purchasing community services need to base funding on relevant market wages for equivalent positions.”

We note that there has historically been some resistance to the notion that the sector’s employees are underpaid, as it is argued that the employees have access to significant non-wage benefits such as the ability to salary sacrifice some expenditure under FBT concessions. While this is true for some not for profits, it is not true for all. Even for those that are eligible for FBT exemptions or concessions, the value of salary sacrificing arrangements is not sufficient to close the pay gap between not for profits and the public or private sectors.

We reiterate our June recommendations that government funding to the community services and welfare sector needs to:

- Use Wage Cost Index as the primary index for annual funding adjustments, with the Consumer Price Index being used when this exceeds the Wage Cost Index. This is because community services are human resource intensive and salaries constitute the major cost component.
- Reduce stop start and short term funding which contributes to workforce instability, high turnover rates and loss of skilled employees and volunteers.
- Take account of the Queensland Industrial Relations Commission decision that: *“the overriding public interest consideration in this matter is to ensure that employees in this sector are remunerated commensurate with their work value and in a way that is affordable to the funding bodies. This will ensure that qualified, competent employees are attracted and retained in the sector to provide quality services, that services users receive appropriately funded quality services so as to properly assist them to increase their capacity ... and finally that the services can be provided at a cost reasonable to the taxpayer.”*¹

In addition ACOSS:

- Supports the November decision by the Australian Services Union and Federal Government to set in train a process to address the low wages of community sector workers via a pay equity test case in the new Fair Work system.

¹ (Queensland Industrial Relations Commission, 2009)

6. Improving the effectiveness of direct government funding

Response to Recommendations and questions posed

ACOSS strongly supports the recommendations contained in this section, in particular “that Australian governments should fully fund those services and activities that they would otherwise fund directly and that “grants should respect the independence of funded organisations.” In addition we draw attention to the recommendations in our submission that governments should:

- Recognise the importance of the advocacy, research, policy development, and representation undertaken by the sector as well as service delivery. This recognition must also include funding for these activities. A recent example is the analysis and policy proposals for reform of personal income tax system prepared by ACOSS for the Australia’s Future Tax System (Henry) review (found at <http://www.acoss.org.au/Publications.aspx?displayID=4&subjectID=6>).
- Invest in capacity building including IT systems and program evaluation. We also refer to NCOSS proposals for Regional Service Hubs and ICT strategy referred to in our June submission, with further detail available from <http://ncoss.org.au/resources/081015-2009pbs.pdf>
- Fund programs for a minimum of three years, with longer funding cycles for place-based strategies in areas of severe disadvantage. However all funding cycles and contracts must include annual Wage Cost Indexation.

7. Removing impediments to better value funding of government funded services

Response to Recommendations and questions posed

We note 12.7 of the Draft report summarises feedback from the survey of government agencies that found not for profit agencies:

- are better able to package the service with other services for the target group;
- provide flexibility in service delivery; and
- are representative of the clients the service is targeting.

Getting the model of engagement right

The Draft Report acknowledges the importance and value of maintaining a diverse community services and welfare sector. This diversity is consistent across organisations that are large and small, local and national, mainstream and specialist.

We welcome the Draft Report’s endorsement of collaborative models of delivery but we recommend a much more central position for this approach. In the Draft Report this model is consigned to circumstances where market based approaches are not feasible and in the context only of “niche problems”. We would contend that much of what is delivered in community services is in response to intractable problems, for example closing the gap on Indigenous disadvantage; reducing long term unemployment; and ensuring people with

disabilities have more equal access to employment participation. There are few policy areas which would not benefit from a more collaborative approach to program design and delivery.

We refer to our June submission and the examples given where governments have used the policy expertise of the sector well, such as the National Rental Affordable Scheme and homelessness policy development and implementation in Queensland.

One of the constraints of the purchaser-provider model as it is currently implemented is that it precludes involvement in design of the program and ongoing input for those delivering it, as well as for those accessing its services. It also reduces sharing of information between agencies who fear losing their competitive edge. One solution may be to use a collaborative approach to design and then decide the best method of delivery, which may or may not include the purchaser-provider model. These considerations also come at a time when there is increasing pressure on services to respond to what consumers want from their services and a growing push for client-directed purchasing and service delivery models.

Improving management and appropriate sharing of risk

We welcome the Report's views on the need to shift the emphasis in contract management from excessive compliance monitoring to a risk-management approach, for instance through the adoption and implementation of the standardised Chart of Accounts for not for profit organisations. Other important reforms would include:

- clauses in contracts to provide for compensation/interest payments where payment to community organisations is delayed;
- shared responsibility by the Federal Government for responding to a situation where there are changes in the external environment, with the details of the response determined on a case by case basis;
- requiring that contracted agencies be given reasons for termination of contracts and access to alternative dispute resolution mechanisms to resolve contractual disputes wherever possible;
- requiring that agencies be entitled to compensation for contract termination where there has been no significant breach of terms by the contracted organisation. This compensation should cover the additional costs borne by the agency as a result of the termination; and
- ensuring that all contracts provide at least a 90 day notification period before termination of a contract (except where there has been a major breach of contractual terms by the contracted organisation).

Streamlining tendering, contracting and reporting requirements

ACOSS welcomes the Draft report's acknowledgement that much of the processes around contracting are overly burdensome yet fail to set sensible outcome measures or assist in performance evaluation and improvement. As we stated in our original submission, regulation focuses on control over the process, often at the expense of ensuring that outcomes are achieved. Respondents to a TASCROSS study of five agencies in 2009 found considerable cynicism about the value of reporting. This was often because there was

rarely any feedback on reports: “*reporting was seen as a one way street*”. Several organisations wondered “*Are they even read?*”²

We strongly endorse the introduction of the common principles developed by the Public Interest Advocacy Centre and The Whitlam Institute and reproduced in the Draft Report on page 12.55. We welcome the recommendations to streamline tendering, contracting and reporting requirements, including the development of Master Agreements that are fit for purpose. Not for profit agencies and peak bodies should be consulted in the development and implementation of any Master Agreements.

In addition, we reiterate one of our original recommendations that has not been taken up in the Draft Report, that:

- The Federal Government commission the Australian Institute of Health and Welfare to undertake an audit of client data collected by the Federal, State and Local Governments and develop a discussion paper for the harmonisation of client data collected from the community services sector.

8. Building stronger, more effective relationships for the future

Response to Recommendations and questions posed

Many of the recommendations contained in the Draft report would help contribute to stronger, more effective relationships for the future. These include:

- Establishment of the Centre for Community Service Effectiveness as an evaluation clearing house and to enable benchmarking and development of best practice standards.
- Smarter regulation and streamlined reporting on the principle of “report once, use often”.
- A 1% allocation of line Department program funding to innovation funds, especially if program outcomes were collaboratively determined and outcomes shared and discussed in a spirit of trust and continuous improvement.
- Market wages for sector staff would improve the two-way flow of personnel between government and not for profit agencies, increasing understanding.
- Grant making and contracting which respects the independence of the not for profit sector.
- Greater emphasis on collaborative models of service delivery, including program design.
- Streamlined Master Agreements and agreed Common Principles for Contracted Services.

Mechanisms for effective working relationships

We agree with the Draft Report’s recommendation around Compacts and that they would need to set out commitments to accountability, policy development and consultation. As stated in our June submission, a Compact must be a living, high-level document, signed by representatives of constituent parts of the sector, as there is no single representative body

² TASCOS study

representing the entire not for profit sector in Australia. A National Compact between the Commonwealth Government and the community services and welfare sector would need to be signed with the Prime Minister, given the breadth of relevance and interaction between the sector and Government.

Supporting effective relationships and driving change

ACOSS supports the recommendation to establish an office for Not-for-Profit Sector engagement within the Department of Prime Minister and Cabinet.

In addition we reiterate the following from our June submission:

- The relationship between governments and the community services and welfare sector needs to be re-engineered to find a more even balance, underpinned by greater levels of understanding about respective roles and responsibilities and a greater sense of common purpose. The sector is more than keen to share its expertise with government in the design of programs and contracts to achieve more responsive and innovative service outcomes. The OECD has recently stated that more open and inclusive policy making “offers a way for governments to improve their policy performance by working with citizens, civil society organisations, business and other stakeholders to deliver concrete improvements in policy outcomes and the quality of public services³.”
- This re-engineered relationship needs to acknowledge the value and independence of the community services and welfare sector.
- Governments should consult meaningfully through representative structures (including appropriate lead times and times for responses) around program and policy implementation and to appoint peak body representatives to relevant Inquiries.
- Relationships can also be improved through better understanding between individuals working in the different sectors. This could include public servants undertaking voluntary work in the community services and welfare sector and a program of secondments between the two (there were numerous secondments from Commonwealth departments to ACOSS in previous years; secondments were also recommended by the Victorian Government Strengthening Community Organisations Action Plan in April 2008 and in the recent KPMG report *Benchmarking Australian Government Administration*). Leadership programs such as Sydney Leadership run by the Benevolent Society and the Leadership Victoria Program bring together leaders from government, not for profit and business sectors and are another practical way to enhance better understanding.
- ACOSS reiterates our earlier call for a greater emphasis on the leadership of the Deputy Prime Minister on social inclusion and across the whole of government via the existing inter-departmental task force. That task force should work and consult

³ OECD: *Focus on Citizens: Public Engagement for Better Policy and Services*, 2009 as cited in the KPMG report [Benchmarking Australian Government Administration Performance](#), November 2009 for the Inquiry into Reform of Australian Government Administration.

with ACOSS, other members of the community services and welfare sector, and other not for profit organisations to support enhanced outcomes for disadvantaged Australians.

**Appendix 1: Excerpts from ACOSS Submission to Inquiry, June 2009,
Ten features and benefits of a strong, diverse and effective not for profit community
services and welfare sector**

Consultations with ACOSS members and research for this submission has highlighted the following key benefits of a strong, diverse and effective not for profit community services and welfare sector.

1. The sector is mission driven rather than market driven. This means that surpluses are reinvested back to provide a dividend for community stakeholders, rather than individual shareholders. This may take the form of an enhanced range of services, increased provision of services, or higher quality services.
2. The mission and altruistic purpose generates goodwill which mobilises additional human and material resources including valuable networks and relationships. While this provides added value, it is important to distinguish between such efficiency and “provision on the cheap”.
3. The altruistic purpose can lead to greater trust and faster and more effective engagement of marginalised individuals – not for profit community service and welfare agencies can be a safe and preferred place to go which is supported by ABS surveys and ACOSS commissioned polling.
4. The sector can be more responsive to previously unrecognised needs resulting from market or government failure – the initiative is far more likely to come from organisations which have a stake in that need, than from government departments or commercially engaged service providers. Not for profit providers often provide services which may be too politically sensitive for governments to directly offer – for example, assistance for asylum seekers, needle injecting centres and sexual health workers.
5. An ability to respond holistically and flexibly - community organisations are generally better equipped to respond to a full range of client needs in a flexible way. Such responsiveness and flexibility cannot be guaranteed by contracted commercial services and probably not by more bureaucratic or siloed government structures.
6. Participation and representation of clients in management structures, program development and delivery can be empowering and lead to more effective outcomes. Representative and networked ways of operating enhance information flows both up and down and across a range of points of contact.
7. A long term commitment to an issue, client group or local community brings a history of knowledge, expertise and lessons learned and a constant search for understanding the structural causes of problems.
8. Innovative solutions based on practice to both anticipate new needs (from an ageing population, a global financial crisis or climate change) and to respond more effectively to ongoing and deep seated inequalities (closing the gap on indigenous life expectancy).
9. Building community cohesion and social capital. Meaningful community involvement in, and responsibility for, providing community services is an important tool for weaving

community cohesiveness. This can serve as a safeguard against some parts of our society becoming marginalised or alienated.

10. The activities of community organisations contribute directly and indirectly to the economy, directly through paid and unpaid employment and indirectly through their contribution to maintaining the wellbeing of individuals, families and communities, thereby providing the human resources necessary for the economy to function.

Appendix 2: Excerpts from ACOSS Submission to Inquiry, June 2009, Measuring early intervention and prevention

QCROSS has drawn attention to this work...

Disadvantaged Queenslanders are more likely to fall into crisis. People in poverty, and people marginalised by location, culture, language, disability, age, and critical health needs are overrepresented in our expensive crisis systems (hospital emergency wards, mental health facilities, prisons, and the youth justice and child protection systems). Prevention and early intervention programs lessen risk, increase resilience – and keep people out of these crisis systems. The cost effectiveness of investing in prevention and early intervention programs is now irrefutable. Work commissioned by QCROSS by the Social Policy Research Center at the University of New South Wales in 2007 has found *“Early intervention has been shown to achieve, at relatively modest cost, changes that prevent harms that are very expensive to remediate. A summary of cost benefits range from 2.36:1 to 19:1. Meaning, for every \$1 spent on early intervention– the state reaps a return of between \$2.36 and \$19 over time”*⁴.

Prevention and early intervention is increasingly recognised in some sections of social policy, namely health. “Queensland Health has identified in 2006 that 9% of all hospitalisations are potentially avoidable through preventative care and early disease management in settings such as community-based services”⁵.

Community Legal Centres

CLCs, like many community organisations, have a community development and strategic focus which means that they not only provide immediate services (often to people in crisis), but also do preventative and early intervention work. Being able to show the 'value' of strategic early intervention or preventative work is even harder than showing outcomes for direct service delivery. Research undertaken by Institute for Sustainable Futures at UTS commissioned by the Combined Legal Centres Group NSW and the National Association of Community Legal Centres shows that for *“each dollar invested in CLCs, around \$100 may be ‘saved’ by CLC clients, government and/or other affected parties”*. This is partly due to their ability to leverage volunteer or pro bono legal help but also because *“much of their work is preventative in that it reduces the need or extent to which individuals are (or could be) involved with the legal system”*. The Welfare Rights Network has identified that in the

⁴ (Queensland Council of Social Service, 2009)

⁵ (Queensland Council of Social Service, 2009)

first 10 months of 2008, its caseworkers assisted in waiving a total of \$1.3million of Centrelink debts.

But how does a CLC demonstrate that their work has successfully supported a person to learn information about their rights and avenues of action, and to develop the skills to assert them in ways that work in the future? When can you measure this and how? For a person who may not return to your service, their failure to return may be a sign of success, or the opposite. There is also a need to study effectiveness, such as through impacts over time and numbers of interventions needed to achieve an outcome⁶.

About this submission

This submission was written by Toni Wren on behalf of ACOSS. It documents and reflects consultations conducted by Toni with ACOSS members during 2009 and benefits from discussions with current and former Board and staff members. It also reflects the significant contributions made by ACOSS to previous relevant Inquiries.

⁶ (National Association of Community Legal Centres, 2009); member consultations.