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## **Social Sector Reform: An Overview of Current Australian Government Initiatives**

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for Social  
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The Centre for Social Impact (CSI) is a bold partnership between the business schools of the University of New South Wales, the University of Melbourne and the Swinburne University of Technology. It brings together the committed hearts and business heads of the philanthropic, not-for-profit, private and government sectors in pursuit of social innovation. It provides socially responsible business management education and research in the common cause of building a stronger civil society for Australia.

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The CSI background papers are succinct papers reviewing academic commentary on a topical issue and its impact on the third sector.

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## Introduction

The sheer volume of inquiries being undertaken by the Rudd Labor Government and by the Commonwealth Parliament poses both a challenge and an opportunity for organisations operating in the social sector. This paper provides an overview of eleven current Australian Government inquiries and initiatives. Each will have an impact on nonprofit organisations and social enterprises<sup>1</sup> to a greater or lesser extent depending on their legal structure, taxation status, and reliance on government grants or public donations. Whilst my analysis is necessarily subjective it has been informed by the issues and options discussed in the more substantive and significant submissions contributed by organisations and individuals to these various Government inquiries.

At present, the public policy process is highly fluid. The social sector, (sometimes referred to as the social economy, the third sector, or the community or voluntary sector) has a significant opportunity to genuinely influence the environment in which it operates and to engage in public policy deliberations. The challenge is to make sense of the various policy developments and their interaction. In documenting this series of current Government initiatives it has been difficult to capture the full details as these unfold in real time, so inevitably some of this information may be out-of-date as it is published.

This paper is intended to provide a framework for public debate and to inform the advocacy process. Through a robust exchange of ideas, and a mutual understanding of what constitutes the 'public interest', it is hoped that government, business and the social sector will more effectively contribute to our democratic process. Whilst some nonprofit organisations and social enterprises will have access to policy analysis and advice, others will not. This paper does not provide a detailed analysis of each topic but rather an overview, designed to inform leaders in the social sector and identify opportunities they have to contribute to the current suite of policy processes at the federal level of government.

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## A case for reform

A key role of government is to set the ground rules on which the social sector operates. More than 700,000 nonprofit organisations and social enterprises are part of the everyday lives of Australians through their involvement in the arts, sports, the environment, community participation, social welfare, health and disability care, and emergency services. The social sector is a major source of employment in the Australian economy, with nearly one million Australians in paid employment representing 8.6% of the workforce and an estimated 5.2 million people providing voluntary services. In 2003-04 over \$10 billion was donated by individuals and businesses to nonprofit organisations. In 2006-07, nonprofit organisations accounted for revenue of \$75 billion which is a \$34 billion or 3.4% contribution to Gross Domestic Product.<sup>2</sup>

The sector encompasses a range of different organisational types from purely voluntary, unincorporated community-based groups to professional and industry associations, and the large, corporatised entities and commercially-oriented sporting clubs. They operate within various industries such as housing, arts, environment, health, aged care, child care, employment, professional services and regional development. The organic growth of the social sector and its vibrant diversity has been a contributing factor to some

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<sup>1</sup> These terms are used to capture all not-for-profit entities including those that conduct commercial businesses as well as for-profit entities established for social purpose.

<sup>2</sup> Centre for Social Impact, UNSW, *The nonprofit sector in Australia : a fact sheet*, 3<sup>rd</sup> Ed, 2009  
<http://www.csi.edu.au/uploads/31642/ufiles/Briefing%20paper%20No1.pdf> (accessed 5 May 2009)

of the current problems of burdensome regulation, lack of consistent reporting requirements and cross-jurisdictional complexity. There is a compelling case for reform to improve the operating environment for the social sector.

Having analysed the plethora of current Australian Government initiatives, it is clear that some of the proposals for change are more relevant to particular segments of the sector (such as the negotiation of a national compact). Other initiatives are targeted at the full spectrum of the social sector (such as the introduction of new national fundraising legislation). It is important to distinguish between the various Government inquiries and their purpose.

The process of change need not be confined to better regulating charities, which is often cited as the main focus but forms only part of the social sector. Any proposed reforms will need to take into account the difference in size, structure and purpose of nonprofit organisations, and the new forms of social enterprise. It is also important that reform measures recognise the importance of enabling social innovation in Australia. Within the numerous consultation documents, reports, and public submissions made to each of these inquiries and reviews, there is an abundance of worthwhile ideas and recommendations about how, and in what form, changes could be made to improve the environment in which the social sector operates.

In the current global financial crisis, pressure is being exerted on community organisations to meet the increased needs of families and individuals, operating conditions are tough and lower investment returns and reduced donations will adversely impact on the viability of many nonprofit organisations and social enterprises. Governments recognise that the social sector is playing an increasingly important role in providing people who might otherwise be experiencing social exclusion or disadvantage with access to community-based activities. This is a good time for nonprofit organisations and social enterprises to review and evaluate their purpose and social impact, and to push for a more supportive regulatory environment.

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## Social Inclusion Agenda

The Rudd Labor Government articulated the concept of 'social inclusion' in its pre-election policies, and on forming government announced that its social policy agenda would be: jobless families with children; closing the gap for indigenous Australians; children at risk; homelessness; employment for people with disabilities or mental illness; and services for communities with the greatest needs. These priorities have been adopted in the reform agenda of the Council for Australian Government (COAG), the coordinating body for federal, state and territory governments.<sup>3</sup>

An Inter-Departmental Committee has been established together with a Social Inclusion Unit within the Department of the Prime Minister and Cabinet, to coordinate social policy initiatives across all Government portfolios including the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Education, Employment and Workplace Relations. The Deputy Prime Minister, The Hon Julia Gillard MP is the Minister for Social Inclusion, and is supported by Senator The Hon Ursula Stephens, Parliamentary Secretary for Social Inclusion and the Voluntary Sector. The Hon Jenny Macklin MP is the Minister for Families, Housing, Community Services and

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<sup>3</sup> Council of Australian Governments, *Communique 3 July*, Sydney 2008, p1  
[http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-07-03/index.cfm#economy](http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm#economy) (accessed 06 March 2009)

Indigenous Affairs and together, these three politicians provide leadership for the Government on social inclusion.

An Australian Social Inclusion Board was appointed in May 2008 to 'act as the main advisory body to the Australian Government on ways to achieve better outcomes for the most disadvantaged in our community'.<sup>4</sup> The Board, which is chaired by Patricia Faulkner of KPMG, includes practitioners from the social sector, business and academia, and has responsibility for wide consultation and provision of advice to the Government on its social inclusion priorities. In January 2009, in response to the global financial crisis, the Government also established a Community Response Task Force. This is chaired by the Deputy Prime Minister and/or the Minister for Families, Housing, Community Services and Indigenous Affairs and assisted by Senator Stephens. The Taskforce comprises thirteen leaders from the community sector to advise the Government on initiatives to assist Australians experiencing financial difficulty.<sup>5</sup>

The Government's focus on social inclusion is a useful starting point for nonprofit organisations and social enterprises seeking to engage with Government on its key policy priorities and related funding programs.

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## A National Compact

As part of its pre-election platform, the Rudd Labor Government made a commitment to establishing a national compact with the community sector.<sup>6</sup> Similar agreements outlining the process of interaction between government and community social welfare organisations exist in most Australian states and territories.<sup>7</sup> A Discussion Paper was released by the Government in August 2008 and the Australian Council of Social Services (ACOSS) was asked to coordinate a consultation process with the community sector to gauge interest and commitment to a national compact.<sup>8</sup> Because the concept of a national compact is informed by the Government's Social Inclusion Agenda it is most relevant to the community and welfare services organisations within the social sector. Over 360 organisations were involved in the consultation and the findings reflect the difficulty of trying to synthesise a diversity of views and perspectives within the social sector, even though the community social welfare organisations have much in common.

The main objective of the compact is to improve the interaction between the Government and the community sector, especially where government services are either outsourced under contractual arrangements or where nonprofit organisations are specifically funded to provide such services to the public. The consultation report states that the benefits of developing a national compact are:

- to provide a framework for building improved relationship between the nonprofit sector and the Australian Government, characterised by trust and collaboration, and with space for robust dialogue;

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<sup>4</sup> Australian Government, *Australian Social Inclusion Board, May 2008*

<http://www.socialinclusion.gov.au/AusGov/Board/Pages/default.aspx> (accessed 06 March 2009)

<sup>5</sup> Australian Government, *Community Response Taskforce, 27 January 2009*

<http://www.socialinclusion.gov.au/AusGov/Pages/taskforce.aspx> (accessed 06 March 2009)

<sup>6</sup> Australian Labor Party, *An Australian Social Inclusion Agenda, New Leadership, Election 07 Policy Document, 2007*, p11

[http://www.alp.org.au/download/071122\\_social\\_inclusion\\_xx.pdf](http://www.alp.org.au/download/071122_social_inclusion_xx.pdf) (accessed 06 March 2009)

<sup>7</sup> Australian Council of Social Services, *National Compact Consultation, Final Report, ACOSS October 2008*, p63,

[http://www.socialinclusion.gov.au/A\\_National\\_Compact.htm](http://www.socialinclusion.gov.au/A_National_Compact.htm) (accessed 06 March 2009)

<sup>8</sup> Ibid.

- to improve policy making through the development of a framework document that can provide strategic coordination of the many initiatives currently being pursued in the social policy arena and create space at the table for the sector to contribute to these;
- to improve the standing of the nonprofit sector in the community by acknowledging its contribution by improving understanding of the sector within Government and by reaffirming its independence; and
- to provide a framework for growth and evolution in the sector including regulatory and legislative reform and initiative to enhance the financial security and viability of the sector.<sup>9</sup>

The consultation report recommended moving to the next stage of development of a national compact, and emphasised that organisations should self-select in relation to their involvement. There has been broad support for improved engagement between the Government and the social sector, although there are divisions of opinion about the level of benefits a national compact will ultimately achieve. A meeting of fifty representatives from the sector was hosted by the Government in December 2008, and in May 2009 a National Compact Joint Taskforce was appointed to commence drafting a Compact.

This Taskforce, which is chaired by John Atkin, MD and CEO of Trust Company, comprises eight representatives from social service organisations and eight representatives from relevant Government departments including the Australian Public Service Commission.<sup>10</sup> A social sector forum will be conducted in July supported by a broader consultation process. It is expected that a draft compact or, if that has not been achieved, a set of principles and priorities, will be presented to the Federal Cabinet by December 2009, with an outline of how changes should be implemented.

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## Disclosure Regimes

The Senate Standing Committee on Economics undertook an inquiry into *Disclosure regimes for charities and not-for-profit organisations* which commenced in June 2008, and a final report was published in December 2008.<sup>11</sup> The Committee included members of each of the political parties and one independent Member of Parliament and examined: the relevance and appropriateness of current disclosure regimes; models of regulation and legal forms that would improve governance and management; and other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.

A wide range of issues were raised in the Background Paper and responses were made through 183 written submissions from individuals and organisations and over 80 witnesses at public hearings around Australia.<sup>12</sup> All fifteen recommendations made by the Committee related to regulatory reform for the social sector covering the regulatory framework, financial and other forms of reporting, legislation, taxation and a publicly accessible register of charities and nonprofit organisations. The Committee recommended the establishment of a national nonprofit regulator with, at a minimum, the power to:

<sup>9</sup> Australian Council of Social Services, *National Compact Consultation*, Final Report, ACOSS, October 2008, p14 [http://www.socialinclusion.gov.au/A\\_National\\_Compact.htm](http://www.socialinclusion.gov.au/A_National_Compact.htm) (accessed 06 March 2009)

<sup>10</sup> Australian Government, *National Compact Joint Taskforce* <http://www.socialinclusion.gov.au/Compact/Pages/default.aspx> (accessed 15 May 2009)

<sup>11</sup> The Senate Standing Committee on Economics, *Disclosure regimes for charities and not-for-profit organisations*, Commonwealth of Australia, Canberra, December 2008 [http://www.aph.gov.au/Senate/committee/economics\\_ctte/charities\\_08/report/e01.htm](http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/e01.htm) (accessed 06 March 2009)

<sup>12</sup> *ibid*, p127

develop and maintain a register with a publicly accessible interface; collect and disseminate data; oversee legislative compliance; develop best practice standards; educate and advise on standards; investigate complaints; and educate the public about the sector. Other key issues addressed through the submissions to the Committee were the burden of regulation and its complexity across eight state and territory jurisdictions, proposals for financial and annual reporting, tax concessions and fundraising legislation.

The Committee's report provides a comprehensive review of the whole social sector and attempts to make sense of its scale, structure and scope including the challenge of defining the sector (referred to as the 'Third Sector'). The Committee's recommendations build on the findings of the earlier inquiries by the Industry Commission<sup>13</sup> and the Attorney General<sup>14</sup> although these focused on community and social welfare organisations rather than the whole social sector. Even so, there has been consistent advocacy for the establishment of a national nonprofit regulatory authority over the past fourteen years.

Based on advice from the sector, the Australian Taxation Office (ATO) and the Australian Securities and Investment Commission (ASIC), the Committee recommended that the new national nonprofit regulator should be independent of the ATO and ASIC and cover all nonprofit organisations, not just charities. Numerous suggestions have been advanced through public submissions for ways to streamline and reduce 'red tape' including the introduction of national fundraising legislation, the adoption of a standard chart of accounts and a new nonprofit accounting standard. The Committee also reported on the need to reduce the current complexity and ambiguity of tax concessions and the lack of consistency in financial and annual reporting and public disclosure requirements.

A key driver for social sector regulatory reform has been the call for improved transparency and disclosure by charities and nonprofit organisations in receipt of public donations and government funding.<sup>15</sup> From the submissions there would seem to be broad consensus in the sector about setting tiers for financial reporting. Smaller nonprofit organisations (which form the vast majority) with, say, below \$100,000 in revenue would not be required to meet formal financial reporting requirements unless they were in receipt of public or government funding. Those organisations with between \$100,000 and \$1 million in annual revenue would have to meet a simpler form of financial reporting than organisations with more than \$1 million in annual revenue.<sup>16</sup>

The Queensland University of Technology's Australian Centre for Philanthropy and Nonprofit Studies has developed a Standard Chart of Accounts (SCOA) through a process of negotiation with government agencies and nonprofit organisations in receipt of government funding.<sup>17</sup> This project has been active for many years and now extends to most state and territory governments. The SCOA outlines consistent terminology and treatment that is useful for nonprofit organisations in setting up their budgets and accounting systems, and provides a strong foundation for streamlining funding

<sup>13</sup> Industry Commission, *Charitable organisations in Australia*, Report No. 45, 16 June 1995, <http://www.pc.gov.au/ic/inquiry/45charit> (accessed 06 March 2009)

<sup>14</sup> Attorney General, *Inquiry in to the definition of charities and related organisations*, Commonwealth of Australia 2001 [http://www.cdi.gov.au/report/cdi\\_summaryofrecs.htm](http://www.cdi.gov.au/report/cdi_summaryofrecs.htm) (accessed 06 March 2009)

<sup>15</sup> Choice magazine, *The business of giving*, March 2009 <http://www.choice.com.au/viewArticle.aspx?id=106240&catId=100268&tid=100008> (accessed 03 March 2009)

<sup>16</sup> This suggestion is based on personal views and an assessment of various options discussed in submissions to the Senate Standing Committee on Economics Inquiry into *Disclosure regimes for charities and not-for-profit organisations*, December 2008 [http://www.aph.gov.au/Senate/committee/economics\\_ctte/charities\\_08/report/e01.htm](http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/e01.htm) (accessed 5 May 2009)

<sup>17</sup> Queensland University of Technology, Australian Centre for Philanthropy and Nonprofit Studies, *Standard Chart of Accounts* <http://www.bus.qut.edu.au/research/cpns/whatweresear/chartofaccou.jsp> (accessed 15 March 2009)

applications and reporting to multiple government agencies. Whilst there is increasing national acceptance of the Standard Chart of Accounts as a tool for financial reporting, there is a need to expedite its adoption across the social sector and this will be assisted by major software providers developing templates based on SCOA and its incorporation in government grant applications and acquittals.

The need for a nationally consistent financial reporting framework is emphasised throughout this Senate Inquiry. There is also recognition of the value of nonprofit organisations and social enterprises reporting on their non-financial performance (beyond the business test of 'profit or surplus') and the use of rigorous evaluation frameworks that measure the social outcome of programs and services. Other recommendations include the creation of an Office of the Third Sector, or equivalent Government ministry, to ensure that appropriate attention is afforded the social sector commensurate with its economic significance.

Key submissions to the Senate Disclosure Inquiry 2008 that form a useful reference on proposed regulatory reform include those made by: Professor Mark Lyons, Chartered Secretaries Australia, Associations Forum, Social Ventures Australia, Public Interest Law Clearing House (Vic), the Institute of Chartered Accountants in Australia, Certified Practising Accountants Australia, Australian Institute of Company Directors, Law Council of Australia, The Australian Centre for Philanthropy and Nonprofit Studies, The University of Melbourne, PricewaterhouseCoopers, Fundraising Institute Australia, National Roundtable of Nonprofit Organisations, Australian Council For International Development, Australian Council of Social Services, The Treasury, the Australia Council for the Arts, the Australian Taxation Office.<sup>18</sup>

The Senate Inquiry was initiated in 2007 by the Australian Parliament rather than the Government. It is anticipated that there will be a formal response from the Government to the Committee's report by mid-2009.

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## Integrity of Prescribed Private Funds

The Commonwealth Treasury issued a Discussion Paper *Inquiry into the integrity of Prescribed Private Funds (PPFs)* in November 2008 and following public consultation has now released an exposure draft of legislation that gives effect to the Government's Budget commitment to improve the integrity of PPFs.<sup>19</sup> These funds will be renamed 'private ancillary funds' and the changes will take effect from 1 October 2009.

Introduced in 2001, there are now 769 PPFs (as at June 2008) with combined total assets of \$1.2billion.<sup>20</sup> The introduction of PPFs has proved to be a significant contributor to the growing commitment in Australia to structured philanthropy enabling individuals, families and businesses to take a strategic and inter-generational approach to their charitable donations. The main thrust of the 138 submissions made to the Treasury's inquiry recommended that any changes to the rules should ensure PPFs maintain their appeal in meeting the needs of philanthropists. The Treasury Discussion Paper

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<sup>18</sup> In addition, numerous charities and other nonprofit organisations also made valuable contributions to this Inquiry and all submissions can be accessed: [http://www.aph.gov.au/Senate/committee/economics\\_ctte/charities\\_08/report/e01.htm](http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/e01.htm)

<sup>19</sup> Australian Government, The Treasury, *Improving the integrity of Prescribed Private Funds (PPFs)*, Discussion Paper, Commonwealth of Australia, November 2008 <http://www.treasury.gov.au/contentitem.asp?NavId=002&ContentID=1444> (accessed 06 March 2009)

<sup>20</sup> Philanthropy Australia, *Response to the Treasury discussion paper*, 8 January 2009, [http://www.treasury.gov.au/documents/1458/PDF/Philanthropy\\_Australia.pdf](http://www.treasury.gov.au/documents/1458/PDF/Philanthropy_Australia.pdf) (accessed 06 March 2009)

identified that the key areas of inquiry were the valuation of assets at market rates each year, increased compulsory distribution of income to charities and increasing the regulatory powers of the Australian Taxation Office (ATO). From the philanthropists' point of view the contentious issues were the proposed level of compulsory annual distributions and the increased public disclosure.

Many submissions argued that the private nature of PPFs was important in protecting individuals and families from unwanted approaches by grant-seekers and unnecessary administration in grant-making. The Exposure Draft legislation issued on 13 May 2009 outlines the new requirement that all Private Ancillary Funds (PAFs) will be identified on the Australian Business Register, including their Deductible Gift Recipient (DGR) entitlement.<sup>21</sup> Treasury has also announced that the ATO will have increased regulatory powers over PAFs and their administration including the endorsement of funds. The ATO will have new powers to disclose any breaches of state or territory laws to the relevant authorities, and to impose penalties to trustees and directors in breach of the new guidelines.

The need for education and training of trustees was acknowledged by the community and was seen to be a useful development that could be offered by appropriate service organisations. The new requirement will be that the PAF must be controlled by a single corporate trustee to ensure governance standards meet the requirements of the *Commonwealth Corporations Act 2001*. Existing funds that do not currently meet this requirement will have until July 2011 to comply.

There has been support for Treasury's suggestion to abolish the current, unwieldy accumulation plans required on establishment. However, there were varied views about what types of investments should be permitted and whether they should be limited to liquid assets that are publicly listed securities, whether they should include illiquid assets such as property and artworks or make allowance for special investment arrangements such as micro-finance. Whilst there was overall support for the valuation of assets at market value as at June each year there has been a suggestion that certain property might be valued only every five years, given that the valuation process can be costly.

The majority of submissions accepted there should be a minimum income distribution, but that a 5% annual distribution would be more appropriate than the 15% proposed by Treasury, in line with long term growth rates for such invested funds.<sup>22</sup> It was noted that the option was available for trustees to use the PPF to 'flow through' funds each year or indeed to run down the capital over time. Not restricting the number of donors to the fund was favoured to suit the inter-generational nature of these private philanthropic trust funds. There was considerable support for enabling the transfer of capital to another Private or Public Ancillary Fund on winding up or as the need arises. Submissions generally supported the idea of flexibility by allowing for the changing personal circumstances of philanthropists through transfer arrangements from private to public funds and vice versa.

Matters such as the role and purpose of PPFs, the type of investments and valuation of assets, the class of entities funds may donate to, the compulsory minimum distributions and the individuals that may be directors of the fund's trustee will be determined by the Treasurer and issued as legally enforceable

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<sup>21</sup> The Parliament of the Commonwealth of Australia, *Exposure Draft Tax Laws Amendment (Prescribed Private Funds) Bill 2009: Explanatory Material*, May 2009. [http://www.treasury.gov.au/documents/1541/PDF/090514%20-%20EM%20-%20master%20update%203%20\(consultation%20version\).pdf](http://www.treasury.gov.au/documents/1541/PDF/090514%20-%20EM%20-%20master%20update%203%20(consultation%20version).pdf) (accessed 15 May 2009)

<sup>22</sup> Philanthropy Australia, *Response to the Treasury discussion paper*, 8 January 2009, p5, [http://www.treasury.gov.au/documents/1458/PDF/Philanthropy\\_Australia.pdf](http://www.treasury.gov.au/documents/1458/PDF/Philanthropy_Australia.pdf) (accessed 06 March 2009)

guidelines. The Assistant Treasurer and Minister for Competition Policy and Consumer Affairs<sup>23</sup>, has outlined the process for consultation on the Exposure Draft and the new Guidelines.<sup>24</sup>

In its Discussion Paper, Treasury identified the portion of funds (45%) that would otherwise be collected through taxation, and that these funds might be better spent by the Government on its policy priorities and for direct provision of services. This raises the question of whether these private philanthropic trust funds should be encouraged to allocate funds for social and environmental benefit, or whether the Australian Government, and its Treasury, sees this as its preserve.

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## Financial Reporting by Unlisted Public Companies

In June 2007, the Treasury issued a discussion paper on *Financial reporting by unlisted public companies* that recognised the differences between listed and unlisted public companies, the majority of which are nonprofit companies limited by guarantee, and questioned whether the current requirements were appropriate.<sup>25</sup> Drawing a parallel with the different reporting required of proprietary companies compared to listed companies, this review acknowledged the multiple stakeholders of nonprofit organisations and the need to promote transparency and good governance. In the submissions made by nonprofit organisations, there was considerable support for the need to introduce tailored accounting standards for nonprofit organisations.<sup>26</sup>

All new accounting standards must take into account the International Financial Reporting Standards (IFRS) which Australia agreed to adopt in 2002. The Australian Accounting Standards Board (AASB) reviews IFRS for application to Australian conditions and reviews all local initiatives in the light of IFRS to ensure Australia maintains sector neutral accounting standards. This is important in the increasingly globalised financial sector in which companies have to produce multiple financial reports according to the different requirements of the countries in which they operate.

The argument against separate accounting standards is that there is no existing equivalent IFRS so a new AASB standard would be required. Supporters of the status quo believe that nonprofit organisations operate, in most respects, like businesses and that any specific reporting, especially non-financial information, can be incorporated into governance and management statements in their annual reports. Nevertheless, the sector strongly advocates for a specific accounting standard for nonprofit organisations because of the 'for-profit' orientation of the current accounting standards and the limited framework for representing an accurate picture of a nonprofit organisation, including details of fundraising costs, volunteer workforce and other distinctive features of social enterprises.

Suggestions for reform include taking the UK approach whereby IFRS is supplemented by a Statement of Recommended Practice (SORP) for transactions unique to a particular class of organisation.<sup>27</sup> An

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<sup>23</sup> At the time The Hon Chris Bowen MP

<sup>24</sup> Assistant Treasurer, Minister for Competition Policy & Consumer Affairs, *Improving the integrity of Prescribed Private Funds – Exposure Draft* release, Media Release 14 May 2009, <http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/051.htm&pageID=003&min=ceb&Year=&DocType=0> (accessed 15 May 2009)

<sup>25</sup> The Treasury, *Financial Reporting by Unlisted Public Companies – Discussion Paper*, Commonwealth of Australia, June 2007 <http://www.treasury.gov.au/contentitem.asp?ContentID=1269&NavId=037> (accessed 6 March 2009)

<sup>26</sup> This was also a recommendation of the 1995 Industry Commission report *Charitable Organisations in Australia* and the Senate Standing Committee on Economics 2008 report on *Disclosure regimes for charities and not-for-profit organisations*.

<sup>27</sup> Professor Mark Lyons, citing Cordery and Baskerville (2007), *Submission to inquiry into the disclosure regimes for charities and other not-for-profit organisations by the Senate Standing Committee on Economics*, August 2008, Submission 67, p15, [http://www.aph.gov.au/senate/Committee/economics\\_ctte/charities\\_08/submissions/sub67.pdf](http://www.aph.gov.au/senate/Committee/economics_ctte/charities_08/submissions/sub67.pdf) (accessed 3 March 2009)

alternative proposal, raised in the Senate Disclosure Inquiry 2008, would be to require nonprofit organisations to issue a Declaration of Financial Position, that is, a less detailed and not publicly audited document.<sup>28</sup> The inability to make effective comparisons between nonprofit organisations due to different accounting treatment and terminology is recognised as being a disadvantage for the overall perception of accountability in the social sector. Funders, including government, corporations and private donors, seek to make comparisons and are keen to assess more accurately the differences in social returns on their investments.

On balance, the views expressed through submissions to this Treasury review were that there would be significant benefit if a mandatory short-form annual report for all nonprofit organisations was publicly available. It might cover:

- statement of objectives (including mission);
- amounts and sources of funding;
- activities that the fundraising and allocated capital supports;
- the processes in place, including risk management to ensure effective performance management of all fundraising, activity support, expenditure and staff and volunteers;
- details of governance arrangements, including directors and company secretary and their remuneration (if any) and board committees; and
- disclosure of the interests of related parties.

Examples of proposed formats can be found in publications on the websites of the Institute of Chartered Accountants in Australia (ICAA), CPA Australia, and the Australian Institute of Company Directors. PricewaterhouseCoopers in conjunction with the Centre for Social Impact has instigated the Transparency Awards for nonprofit organisations using the ICAA framework designed to promote good practice in disclosure and reporting.<sup>29</sup>

Treasury is reviewing the submissions received in response to its Discussion Paper and will brief the Minister for Superannuation and Corporate Law<sup>30</sup> in coming months with the expectation of a final report by the end of 2009.

An overall review of reporting requirements and a commitment to reducing red tape for nonprofit organisations has been made by COAG's Business Regulation and Competition Working Group (BRCWG).<sup>31</sup> This initiative will review: the operating structures for nonprofit organizations and supporting legislation; fundraising licensing requirements and supporting legislation; governance and

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<sup>28</sup> Associations Forum, *Submission to inquiry into the disclosure regimes for charities and other not-for-profit organizations*, August 2008, p11 [http://www.aph.gov.au/senate/Committee/economics\\_ctte/charities\\_08/submissions/sub107.pdf](http://www.aph.gov.au/senate/Committee/economics_ctte/charities_08/submissions/sub107.pdf) (accessed 3 March 2009)

<sup>29</sup> Institute of Chartered Accountants of Australia, *Enhancing not-for-profit annual and financial reporting*, 2009, [http://www.charteredaccountants.com.au/files/documents/NFP\\_Report09\\_PDF.pdf](http://www.charteredaccountants.com.au/files/documents/NFP_Report09_PDF.pdf) (accessed 15 March 2009)

<sup>30</sup> At the time The Hon Nick Sherry MP

<sup>31</sup> Ministers for Innovation, Industry, Science and Research, *COAG working group kicks off regulatory reform agenda for 2009*, media release, 13 March 2009 <http://minister.innovation.gov.au/Emerson/Pages/COAGWORKINGGROUPKICKSOFFREGULATORYREFORMAGENDAFO R2009.aspx> (accessed 14 March 2009)

financial reporting; and the role of regulators. This program is being lead by the Minister for Finance and Deregulation<sup>32</sup> and the Minister Assisting<sup>33</sup> in their capacity as co-chairs of the BRCWG.

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## Henry Tax Review

On 13 May 2008 the Australian Government announced a review into *Australia's Future Tax System*, led by the Secretary of the Commonwealth Treasury, Ken Henry. It is commonly referred to as the 'Henry Tax Review'. An aspect of this wide-ranging review seeks to investigate 'measures to strengthen the financial security of seniors, carers, and people with disability'. The driving principles for tax revenue outlined in the terms of reference are to achieve 'economic efficiency, provide equity, and minimise complexity for taxpayers and the community'. An initial discussion paper and public submissions resulted in the release of a consultation paper in December 2008.<sup>34</sup> Section 7 of the consultation paper addresses nonprofit organisations by observing that tax concessions to this sector are 'complex and applied unevenly.' It notes that current tax deductibility arrangements for gifts and donations 'impose compliance costs on individuals and provide higher income donors with a greater taxation benefit than lower income donors.'<sup>35</sup>

Two questions asked in this review are directly related to the social sector:

- What is the appropriate tax treatment for nonprofit organisations, including compliance obligations?
- Given the impact of the tax concessions for nonprofit organisations on competition, compliance costs and equity, would alternative arrangements (such as the provision of direct funding) be a more efficient way of assisting these organisations to further their philanthropic and community-based activities?

A number of key community social welfare organisations have made submissions in response to the initial discussion paper that address taxation concerns for the socially disadvantaged. The Henry Tax Review specifically excludes areas being covered by other inquiries (such as proposals to improve the integrity of PPFs). The National Roundtable of Nonprofit Organisations notes that there is a range of concessions given by different levels of government, each to different types of nonprofit organisations. There are currently 34 ways in which a nonprofit organisation may qualify for income tax exemption (two of which apply to charities) and 47 ways of qualifying as a deductible gift recipient (DGR).<sup>36</sup>

The Henry Tax Review identifies the need to investigate the bona fide activities of nonprofit organisations where they are carrying out for-profit business activities. Examples of this include nonprofit organisations that make surpluses from commercial activities, or win contracts from governments for the delivery of publicly-funded services. The Henry Tax Review may also focus on social enterprises set up as for-profit businesses where the profits are directed to a social purpose rather than to private individuals. The question of the status and viability of social enterprises was raised by the Senate Disclosure Inquiry 2008 but, as there were few submissions on this subject, it was

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<sup>32</sup> At the time The Hon Lindsay Tanner MP

<sup>33</sup> At the time The Hon Dr Craig Emerson MP

<sup>34</sup> Henry Tax Review, *Australia's future tax system*, Consultation Paper, 10 December 2008  
<http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/reference.htm> (accessed 6 March 2009)

<sup>35</sup> Ibid, p161

<sup>36</sup> Professor Mark Lyons, *Submission to inquiry into the disclosure regimes for charities and other not-for-profit organisations by the Senate Standing Committee on Economics*, August 2008, Submission 67, p5,  
[http://www.aph.gov.au/senate/Committee/economics\\_ctte/charities\\_08/submissions/sub67.pdf](http://www.aph.gov.au/senate/Committee/economics_ctte/charities_08/submissions/sub67.pdf)(accessed 3 March 2009)

recommended that further research should be undertaken by the Government. The 2001 Charities Definition Inquiry recommended that nonprofit enterprises should be allowed to engage in commercial activities where these contributed directly to the dominant charitable purpose.<sup>37</sup> It is not clear from the commentary provided by the Henry Tax Review how, or indeed whether, it will be addressing this issue.

Other sector-relevant issues being investigated by the Henry Tax Review include income tax exemption, the GST registration threshold, certain GST-free arrangements, GST input credits, the value of Fringe Benefit Tax concessions to nonprofits, the ability to receive tax deductible gifts and extending tax exemption for member-based organisations to provide clarity and certainty.

It is reasonable to assume this Review might examine further the taxation issues raised in the Senate Disclosure Inquiry 2008 including:

- the definition of charities and confusion about interpretation;
- the treatment of commercial activities conducted by nonprofit organizations;
- application of the mutuality principle in relation to membership income;
- determination of charitable status not by the ATO but by a new Third Sector regulator;
- the advocacy role of nonprofits and how this interacts with charitable classification;
- whether Deductible Gift Recipient status should be extended to organisations involved in preventative rather than service-delivery programs.<sup>38</sup>

In its consultation paper the Henry Tax Review notes the need for long term (sustainable) tax revenue to finance infrastructure and defence acquisition. The social sector has advocated for long term revenue to build capital, to finance infrastructure and to financially secure organisations addressing the most intractable social and environmental challenges. As yet there is no specific commitment within the Henry Tax Review to investigate the merits of a social investment fund, as outlined by organisations including Social Ventures Australia, to provide a continuous and long term source of venture capital for social enterprises and social innovation.<sup>39</sup>

Post-review implementation of changes to taxation would no doubt be more effective if other reform initiatives including a new national nonprofit regulatory authority had been implemented. Professor Mark Lyons in his submission to the Senate Disclosure Inquiry 2008 has suggested that reforms to incorporation, fundraising legislation, and public disclosure should be implemented prior to addressing the complexity of taxation issues.<sup>40</sup>

Treasury is currently conducting consultations and accepting submissions and the Henry Tax Review is due to report to the Treasurer by the end of 2009.

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<sup>37</sup> Commonwealth of Australia, *Inquiry into the definition of charities and related organisations*, 2001, recommendation 3, chapter 12 [www.cdi.gov.au](http://www.cdi.gov.au) (accessed 4 March 2009).

<sup>38</sup> The Senate Standing Committee on Economics, *Disclosure regimes for charities and not-for-profit organisations*, December 2008 [http://www.aph.gov.au/Senate/committee/economics\\_ctte/charities\\_08/report/index.htm](http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/index.htm) (accessed 3 March 2009)

<sup>39</sup> Social Ventures Australia, *SVAs perspectives on the existing disclosure regimes*, Submission 139, August 2008 [http://www.aph.gov.au/senate/Committee/economics\\_ctte/charities\\_08/submissions/sub139.pdf](http://www.aph.gov.au/senate/Committee/economics_ctte/charities_08/submissions/sub139.pdf) (accessed 5 April 2009)

<sup>40</sup> Professor Mark Lyons, *Submission to inquiry into the disclosure regimes for charities and other not-for-profit organisations by the Senate Standing Committee on Economics*, August 2008, Submission 67, p9, [http://www.aph.gov.au/senate/Committee/economics\\_ctte/charities\\_08/submissions/sub67.pdf](http://www.aph.gov.au/senate/Committee/economics_ctte/charities_08/submissions/sub67.pdf) (accessed 3 March 2009)

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## National Innovation System

The Australian Government commissioned a review into the National Innovation System in January 2008 and the report by Dr Terry Cutler entitled *Venturous Australia: building strength in innovation* was published in August 2008.<sup>41</sup> Of the 700 public submissions there were only a few from nonprofit organisations, notably The Smith Family and the Australian Social Innovation Exchange.<sup>42</sup> Innovation is identified in this review as a pre-eminent determinant of prosperity. The review did not specifically address social innovation (and its role in advancing prosperity), however nonprofit organisations and social enterprises might consider themselves captured by these recommendations to the extent that they are ‘business enterprises and workplaces’.

The *Venturous Australia* report defines innovation as more than research and development or even the commercialisation of products and services. It refers to consistent innovation across products, inventions and technologies as well as operations, organisation, relationships and business models. The report refers to the importance of collaboration and knowledge flows and the focus needed to strengthen innovation at the point of engagement with customers. Themes covered in the report include: the importance of human capital; the rules of engagement with government and its ability to improve information flow; the role of research organisations and their links with the sector; and the place for tax incentives in the funding of innovation. The need to assist innovative organisations in the ‘high-risk early stages of proof-of-concept and development’ is emphasised. The key recommendations would be applicable to any similar study of social innovation in that government assistance should focus on: building capacity to absorb and incorporate knowledge; facilitating collaboration including with research agencies; and improving access to capital.

On May 12, 2009 the Australian Government released its policy agenda on innovation to 2020 and one of the seven priorities is to ensure that ‘the public and community sectors work with others in the innovation system to improve policy development and service delivery.’<sup>43</sup> There is an attempt to achieve a better balance between innovation that leads to better products and innovation in policy design and processes. Social innovation is dealt with primarily in this context. ‘Very often the answer to a problem lies not in introducing new technologies, but in developing smarter policies and more effective ways of meeting people’s needs. An effective innovation system can do more than churn out new gadgets, it can show us better ways to live.’<sup>44</sup> This innovation agenda recognises that the bulk of research in social services is conducted by the public sector noting that ‘it is precisely because delayed returns and uncontrollable spill-over discourage private investment in basic research that public investment is essential.’<sup>45</sup>

The Macquarie Group Foundation, together with Social Ventures Australia, Mission Australia and the Centre for Social Impact, hosted a Social Innovation Summit in September 2008.<sup>46</sup> It focused attention on the unfulfilled potential of social innovation in Australia including improvements to the structures,

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<sup>41</sup> Cutler & Company, *Venturous Australia: building strength in innovation*, August 2008

<sup>42</sup> Submissions to the National Innovation System Review by The Smith Family and The Australian Social Innovation Exchange <http://www.innovation.gov.au/Search/Results.aspx?k=submissions> (accessed 14 April 2009)

<sup>43</sup> Australian Government, *Powering Ideas: an innovation agenda for the 21<sup>st</sup> century*, May 2009, p4

[http://www.innovation.gov.au/innovationreview/Documents/PoweringIdeas\\_fullreport.pdf](http://www.innovation.gov.au/innovationreview/Documents/PoweringIdeas_fullreport.pdf) (accessed 13 May 2009)

<sup>44</sup> Ibid, p14

<sup>45</sup> Ibid, p31

<sup>46</sup> Mission Australia, *Social Innovation Summit*, media release, 26 September 2008,

<http://www.missionaustralia.com.au/news/media-releases/762-mission-australia-joins-industry-and-government> (accessed 21 April 2009)

processes and frameworks of investment, reporting, information sharing and government contracting. Recommendations from this Summit have been presented to the Australian Government including the creation of a regulatory commission to establish national standards of transparency and accountability, and a Board for the Social Economy with the objective of mapping and measuring social innovation and best practice.

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## Carbon Pollution Reduction Scheme

Public commentary on the proposed Emissions Trading Scheme, now called the Carbon Pollution Reduction Scheme (CPRS) will be familiar to most Australians. There are economic implications in putting a cost on carbon pollution for industries, households and the community sector. Of the thousand or so submissions on the Government's Green Paper there were only a few from the social sector and these largely dealt with concerns affecting the community. The Government's White Paper issued on 15 December 2008 mentions the potential impact of the CPRS on the community sector and anticipates the types of assistance being proposed to offset the additional cost of energy.<sup>47</sup> There is not much more detail as yet and submissions on the draft legislation have been sought by the Department of Climate Change.

There is Government recognition that community service organisations may experience higher operating costs as a result of higher energy costs and may not be able to pass these onto consumers of their programs and services. The Government proposes to assist the social sector through a Community Organisation Capital Allowance program to invest in energy efficiency and reductions in fuel tax. Information and education resources will also be provided to help community organisations become more energy efficient.

Nonprofit organisations and social enterprises can prepare for the introduction of the CPRS by undertaking an audit of greenhouse gas emissions and energy consumption for their operations. This information will better equip social sector organisations to inform the design of any assistance packages being developed by the Government. There may also be opportunities for some nonprofit organisations to access the international carbon trading market, for example, aid agencies establishing projects in developing countries that offer carbon-emission offsets.<sup>48</sup> The implications of the introduction of the CPRS will also be considered by the Henry Review which is due for completion by the end of 2009. Current projected implementation of the CPRS is 2011.

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## National Human Rights Consultation

In December 2008 the Commonwealth Attorney General launched the *National Human Rights Consultation* to seek community views about how human rights and responsibilities should be protected in the future.<sup>49</sup> This consultation ties in with the recommendations from the *2020 Summit*<sup>50</sup> held in April 2008 and the Rudd Labor Government's commitment to giving Australians a say in the current

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<sup>47</sup> Commonwealth Department of Climate Change, *Carbon Pollution Reduction Scheme*, White Paper, 15 December 2008, <http://www.climatechange.gov.au/emissionstrading/index.html> (accessed 16 March 2009)

<sup>48</sup> The Australian, Carbon trade lends charity greater vision, Julie-Anne Davies, May 16, 2009 <http://www.theaustralian.news.com.au/story/0,25197,25490812-2702> (accessed 17 May 2009)

<sup>49</sup> Commonwealth Attorney-General's Department, *National Human Rights Consultation*, December 2008 <http://www.humanrightsconsultation.gov.au/> (accessed 16 March 2009)

<sup>50</sup> Australian Government, *2020 Summit*, <http://www.australia2020.gov.au/> (accessed 30 May 2009)

system of human rights protections.<sup>51</sup> The Australian Government has already taken action such as the national apology to Indigenous Australians, the 'closing the gap' initiative for indigenous communities, same-sex reforms, ratifying the United Nations Disabilities Convention and more humane treatment of refugees and asylum seekers.

The Committee's terms of reference ask the questions:

- Which human rights (including corresponding responsibilities) should be protected and promoted?
- Are these human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

Chaired by Father Frank Brennan AO, a Professor of Law at the Australian National University, the Committee is seeking community views and submissions on the broad implications of human rights protection and the fundamental belief in the equality of all persons. Its report is due for publication by 31 August 2009 and will set out the advantages and disadvantages (including social and economic costs and benefits) of each option proposed together with an assessment of the level of community support.

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## Counter-Terrorism Financing

The Commonwealth Attorney-General's Department released a draft paper entitled *Guidance for non-profit organisations on counter-terrorism financing* in February 2009 as part of its Anti-Money Laundering and Counter-Terrorism Financing initiative which commenced in 2003.<sup>52</sup> Consultations with the nonprofit sector took place during the second half of 2008 and responses to the draft guidance have been sought. The purpose of this guidance is to: build awareness of the risk of being misused for the purpose of terrorism financing; outline best practice principles which nonprofit organisations can undertake to reduce this risk; and assist nonprofit organisations to understand and comply with legal requirements in relation to terrorism financing. Misuse of nonprofit organisations could possibly occur where a 'front organisation' has been set up to raise funds for a charitable cause in their region, or may be a delivery organisation, which redirects funds to terrorist activities.

The draft Guidance cites many reasons why terrorists may target nonprofit organisations such as public trust, global presence and 'lighter touch' regulation of the nonprofit sector. A series of case studies outlining possible organisational vulnerabilities and forms of misuse are available on the Government's national security website. Clearly the nonprofit organisations at highest risk will be those that contribute to overseas aid programs and projects. Nonprofit organisations are warned to use their best endeavours to collect information about third parties such as individuals and organisations they are working with and also the beneficiaries of the programs 'on the ground'. The Guidance itself is not a legal document but rather a guide to best practice.

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<sup>51</sup> Australian Government, *2020 Summit*, Commonwealth of Australia, 2008 [http://www.australia2020.gov.au/final\\_report/index.cfm](http://www.australia2020.gov.au/final_report/index.cfm) (accessed 4 March 2009)

<sup>52</sup> Commonwealth Attorney-General's Department, *Guidance for Nonprofit Organisations on Counter-Terrorism Financing (draft)*, February 2009 [http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering\\_Non-ProfitOrganisations\(accessed](http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering_Non-ProfitOrganisations(accessed) (accessed 16 March 2009)

There are serious legal implications for organisations found to be parties to terrorism financing. Australia is a signatory to the United Nations' convention on financing terrorism<sup>53</sup> and criminal penalties would apply under the *Commonwealth Criminal Code Act 1995*. Nonprofit organisations and social enterprises need to be aware of the lists made available in other countries identifying individuals and organisations suspected of, or associated with, terrorism. In Australia there are two lists – the Consolidated List and the List of Terrorist Organisations - maintained by the Australian Government and made available on the national security website.

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## Contribution of the Nonprofit Sector

In March 2009, the Australian Government announced that the Productivity Commission would examine the contribution of the nonprofit sector to Australian society. This initiative fulfilled an election commitment by the Rudd Labor Government to investigate ways to maximise the sector's contribution to social inclusion, employment and economic growth. The terms of reference are couched in the context of the Government's Social Inclusion Agenda, ways to enhance the contribution of community organisations, and acknowledgement of the changing relationships between government, business and community organisations. The study is being lead by Robert Fitzgerald AM, the Presiding Commissioner, who was a member of the Commonwealth's 2001 Charities Definition Inquiry and Associate Commissioner, Dennis Trewin AO, a former Australian Statistician and head of the ABS.

There are seven terms of reference covering:

- current measurement of the sector's contribution and the use of these measurements to help shape government policy and programs;
- alternatives for, or improvements in, these measurements to capture the sector's full contribution; unnecessary burdens or impediments to the efficient and effective operation of community organisations generally;
- options for improving the efficient and effective delivery of government-funded services by community organisations;
- the changing nature of relationships between government, business and community organisations and opportunities to enhance such relationships;
- the extent to which tax deductibility influences decisions to donate; and
- the extent to which tax exemptions to nonprofit organisations affect the competitive neutrality of the market.<sup>54</sup>

The scope for the Productivity Commission study encompasses a broad definition of nonprofit organisations. The first three terms of reference address the need for a framework in which to measure the sector's contribution and to find ways for improving its efficiency and effectiveness. The next term specifically deals with the community social welfare organisations contracted and funded to deliver government services. The fifth term captures the growth in Corporate Social Responsibility within the business community and the shifting nature of the relationships between government,

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<sup>53</sup> United Nations, *International convention for the suppression of the financing of terrorism*, December 1999 <http://untreaty.un.org/english/Terrorism/Conv12.pdf> (accessed 15 April 2009)

<sup>54</sup> Productivity Commission, *Contribution of the not for profit sector*, Issues Paper, April 2009 <http://www.pc.gov.au/projects/study/not-for-profit> (accessed 8 April 2009)

business and the social sector. The last two terms of reference deal exclusively with taxation issues so this may address concerns that social sector taxation issues are not being given prominence by the Henry Tax Review.

An Issues Paper was published by the Productivity Commission in April 2009 and public submissions are being sought.<sup>55</sup> A series of consultation forums and roundtables are being conducted to facilitate discussion with the social sector. The Commission is expected to release its draft paper in September 2009 and will again seek public submissions. The final report is due to be published by the end of 2009.

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## Next steps

How can the Australian Government, working with the state and territory governments, business and nonprofit organizations and social enterprises, create an environment in which the social sector thrives, is able to innovate, and ensures that people are better served by, and are more connected to, civic society?

Previous reviews and inquiries, such as the 1995 Industry Commission Inquiry, the 2001 Charities Definition Inquiry, and the 2008 Senate Economics Committee Inquiry into Disclosure Regimes, have identified systemic problems in the social sector and made suggestions for reform. Unfortunately recommendations for change have been largely ignored. For almost two decades there has been a widely-held view that a national regulator for the nonprofit sector should be established. Because organisations operating in the sector are subject to a wide variety of inconsistent rules and regulations, as determined by each of the eight states and territories, there would be valuable administrative benefits for nonprofit organisations if they could operate within a simplified and harmonised regulatory system. Yet, until now, there has been little progress. The need for reform of the operating environment for the social sector has been driving the continued call for a new national regulatory authority.

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## A new national nonprofit regulatory authority

With the creation of a charities commission in the UK<sup>56</sup>, and more recently in New Zealand<sup>57</sup>, it is surprising that the Australian Government has not taken up a similar initiative. What Australia's tardiness has resulted in is an opportunity to learn from these different structures and their experiences and to incorporate the best ideas and most effective approaches into the structural design for a nonprofit authority in Australia. The differences in the sector's history, composition, and relationship with governments in the Australian setting would need to be accommodated. Various reviews and research papers have recommended that any new authority be separate from the existing regulators, that is, the Australian Taxation Office and the Australian Securities and Investment Commission, although shared back-office would result in efficiencies. Neither of these organisations was considered to be able to give sufficient focus to the specific legislative and reporting requirements of nonprofit organisations and social enterprises.<sup>58</sup>

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<sup>55</sup> Ibid.

<sup>56</sup> The Regulator for Charities in England and Wales, <http://www.charity-commission.gov.uk/> (accessed 15 March 2009)

<sup>57</sup> New Zealand Charities Commission, <http://www.charities.govt.nz/> (accessed 15 March 2009)

<sup>58</sup> The Senate Standing Committee on Economics, *Disclosure regimes for charities and not-for-profit organisations*, December 2008, p44-46, [http://www.aph.gov.au/Senate/committee/economics\\_ctte/charities\\_08/report/index.htm](http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/index.htm) (accessed 3 March 2009)

A key consideration will be to determine the role a national nonprofit authority should take and whether its' overall responsibility should encompass setting taxation guidelines, rules for incorporation, reporting frameworks and standards, as well as consumer protection and education. Authorities such as the Australia Council for the Arts, the Australian Sports Commission and the Office for Indigenous Corporations already exist to address aspects of regulation, public policy, education and advocacy in these segments of the sector.

A major benefit in establishing a new national regulatory authority would be the centralisation and coordination of legislation across all government jurisdictions – federal, state, territory and local – to more effectively enable nonprofit organisations and social enterprises to operate nationally under consistent incorporation and fundraising legislation. By allowing organisations to voluntarily opt-in to a new regulatory framework, nonprofit organisations and social enterprises could determine their need to register and comply. Most likely those organisations with paid staff, or in receipt of government funding, public donations, corporate or private philanthropy, would choose to become part of the new regime.

Participation would provide them with the advantages of streamlined regulation, guidance on good governance and practice standards, consistent and coordinated reporting requirements, access to tax concessions, and ease of national operation and fundraising. The test for the success of any new regulatory regime should be improved transparency and accountability by nonprofit organisations and social enterprises, and a reciprocal increase in government, business and public confidence in, and support for, the social sector.

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## Initiatives towards self-regulation

The building blocks for regulatory reform have progressively taken shape with sector initiatives such as the Fundraising Institute of Australia's code of conduct and practice standards<sup>59</sup>, the Australian Council For International Development's code of practice<sup>60</sup>, the development by the Queensland University of Technology's Australian Centre for Philanthropy and Nonprofit Studies of the standard chart of accounts<sup>61</sup> and the Institute of Chartered Accountants Australia's guidelines for financial and annual reporting<sup>62</sup>. These self-regulatory activities provide an important demonstration of the sector's ability to co-ordinate its interests in spite of the diverse range of organisations and industries encompassed by the social sector.

The ASX Corporate Governance Council produced principles and guidelines for reporting by listed companies which are voluntary, using the principle of 'if not, why not' – that is, companies indicate how they have (or why they have not) used these reporting guidelines.<sup>63</sup> Over a period of two years, these principles and guidelines were negotiated amongst a large stakeholder group with the support of a

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<sup>59</sup> Fundraising Institute Australia, *Principles and Standards*, 2008, [http://www.fia.org.au/AM/Template.cfm?Section=Principles\\_and\\_Standards\\_of\\_Fundraising\\_Practice](http://www.fia.org.au/AM/Template.cfm?Section=Principles_and_Standards_of_Fundraising_Practice) (accessed 15 March 2009)

<sup>60</sup> Australian Council for International Development, *Code of conduct*, <http://www.acfid.asn.au/code-of-conduct> (accessed 15 March 2009)

<sup>61</sup> Queensland University of Technology, Australian Centre for Philanthropy and Nonprofit Studies, *Standard Chart of Accounts*, <http://www.bus.qut.edu.au/research/cpns/whatweresear/chartofaccou.jsp> (accessed 15 March 2009)

<sup>62</sup> Institute of Chartered Accountants of Australia, *Enhancing not-for-profit annual and financial reporting*, 2009, [http://www.charteredaccountants.com.au/files/documents/NFP\\_Report09\\_PDF.pdf](http://www.charteredaccountants.com.au/files/documents/NFP_Report09_PDF.pdf) (accessed 15 March 2009)

<sup>63</sup> Australian Stock Exchange, *Corporate Governance Principles and Guidelines*, ASX, Sydney 2007, <http://asx.ice4.interactiveinvestor.com.au/ASX0701/Corporate%20Governance%20Principles/EN/body.aspx?z=1&p=-1&v=1&uid> (accessed 4 April 2009)

professional secretariat. This process could serve as a useful model for the social sector in developing a framework for reporting in anticipation of a new national regulatory regime.

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## Rationalisation of regulation

Problems associated with the lack of clarity and consistency in reporting requirements, the inefficiencies of current regulation and the confusion and apparent inequity of taxation treatment have been detailed in the many submissions to the 2008 Senate Inquiry into Disclosure Regimes, including those made by the professional associations and the National Roundtable of Nonprofit Organisations. Some of the current Government initiatives seek to address these regulatory concerns, including the Henry Tax Review of *Australia's Future Taxation System* and Treasury's review of *Financial Reporting by Unlisted Public Companies*. There is also a commitment through COAG's Business Regulation and Competition Working Group to streamline and coordinate social sector regulation.

The goal of positioning the Australian taxation system to better deal with the challenges of the 21st century and enhance economic and social outcomes, provides the ideal opportunity for clarification and rationalisation of taxation affecting the social sector. Unless there is sector specific expertise and consideration given to the particular circumstances of nonprofit activity, there is a danger that some of the Henry Tax Review's conclusions might produce unintended negative outcomes for the social sector. For example, concessions such as the ability for tax-exempt nonprofit organisation to claim dividend imputation on shares and the current availability of FBT exemption for up to \$30,000 per employee available to Public Benevolent Institutions could be at risk.

It is essential, given the numerous inquiries and reviews underway, that these deliberations are cross-referenced to produce a coherent picture of the social sector and coordinated recommendations for change.

An additional advantage of creating a national nonprofit regulatory authority would be its function as a central repository of data on the size, structure and activities of the social sector, at least for those entities participating in a new regime. Currently there is no regular, robust mechanism for collecting information on the goods and services provided by the sector, or its overall contribution to the economy, although the Australian Bureau of Statistics (ABS) has made progress with its Satellite Account for 1999-2000 and non-profit institutions analysis for 2006-2007.<sup>64</sup> There is further scope for the ABS to undertake more detailed analysis of the data already collected on the social sector.

Along with leading countries worldwide the Australian Government has adopted the United Nations approach to analysing nonprofit institutions within the national accounts.<sup>65</sup> It is now incumbent on the Government to develop the mechanism and provide the resources to ensure that the sector's social and economic contribution is measured, managed and recognised for the value it contributes to Australia's wellbeing and prosperity.

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<sup>64</sup> Australian Bureau of Statistics (2002), *Nonprofit Institutions Satellite Account 1999-2000 Cat No 5256.0*. ABS, Canberra <http://www.abs.gov.au/ausstats/abs@.nsf/productsbyCatalogue/A41A454D8A63A4DCCA256C7E0076ABE2?OpenDocument#> and Australian Bureau of Statistics (2008), *Not-for-profit organisations, Australia, 2006-07*, Cat. No. 8106.0, ABS, Canberra <http://abs.gov.au/Ausstats/abs@.nsf/0/C068946BDCA09FAFCA25749B0017A3D4?OpenDocument> (accessed 14 March 2009)

<sup>65</sup> United Nations, *Handbook on non-profit institutions in the system of national accounts*, New York 2003 [http://unstats.un.org/unsd/publication/SeriesF/seriesF\\_91E.pdf](http://unstats.un.org/unsd/publication/SeriesF/seriesF_91E.pdf) (accessed 14 March 2009).

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## **A productive partnership between the sector and government**

Underlying the call for regulatory reform is an expressed desire by both the social sector, and the Australian Government, to improve the working relationship between nonprofit organisations, governments and their public service departments. The sector's role as advocate on behalf of its constituents or clients, and its capacity to identify and address the needs of the community, is not sufficiently recognised by governments. Certainly the channels of communication are not always open or two-way. In the spirit of improving its relationship with the social sector, the Rudd Labor Government initiated a consultation process, lead by the Australian Council for Social Services and subsequently a Joint Taskforce, to develop *A National Compact* setting out the 'rules of engagement'.<sup>66</sup>

Some state governments already have charters or compacts that have been designed to inform the ways in which they interact with community social welfare organisations. Too often they have failed to influence government - non profit relations in a continuing manner. In 1999, the United Kingdom's compact was conceived within a much bolder plan by the then Blair Government and given considerable ongoing resources to ensure its success. Conversely, the Canadian version failed to get much traction. Often there is insufficient awareness of the existence and substance of these documents or the necessary champions to ensure genuine impact. One of the main challenges to establishing *A National Compact* will be the asymmetry of power that exists between the Australian Government and Australian Public Service (on the one hand) and nonprofit organisations (on the other).

There have already been extensive consultations and it is to be hoped that a compact can be concluded expeditiously. If a whole-of-sector compact cannot be achieved there would be value in the Australian Government agreeing a policy on how it seeks to engage with nonprofit organisations and social enterprises with which it has contractual and/or funding arrangements and to establish processes to ensure that good intentions are turned into practice. At the very least, nonprofit organisations should have the capacity to negotiate the administrative guidelines under which they deliver government services so that burdensome micromanagement by the public service can be avoided. At best, nonprofit organisations should be given far greater opportunity to influence the public policy that determines the form of the government programs and services they deliver.

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## **Measuring the contribution of the social sector**

The Australian Government has recently asked the Productivity Commission to undertake a study of the contribution made by the nonprofit sector. The terms of reference, and topics covered in the Issues Paper released in April 2009, are wide-ranging.<sup>67</sup> It is hoped this study will advance discussion on improvements to regulation and support for building the capacity of the sector, the mechanism for sector data collection and analysis, and build on the valuable proposals for reform outlined in previous and current Government and Parliamentary inquiries. The benefits of this study by the Productivity Commission will be the Commission's capacity to undertake rigorous research, to develop a measurement methodology, and apply its professional expertise to synthesise innovative thinking into a cohesive program of reform.

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<sup>66</sup> Australian Council of Social Services, *National Compact Consultation: Final Report*, ACOSS, Canberra, October 2008 [http://www.socialinclusion.gov.au/A\\_National\\_Compact.htm](http://www.socialinclusion.gov.au/A_National_Compact.htm) (accessed 4 March 2009)

<sup>67</sup> Productivity Commission, *Contribution of the not for profit sector*, Issues Paper, April 2009 <http://www.pc.gov.au/projects/study/not-for-profit> (accessed 8 April 2009)

The contribution of the social sector can be measured, and therefore valued, using five criteria:

1. the provision of community benefit goods and services including cost-effective and citizen-centred delivery of social programs in public markets;
2. the social capital generated through mutuality, networks and participation;
3. the social and environmental outcomes and the impact of the sector on improving the lives of Australians;
4. the direct economic contribution of employment; and
5. the capacity to advocate for changes to public policy.

It is important that these distinct components are recognised and incorporated into the design of public policy so that innovative solutions are encouraged to emerge.

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## Fostering social innovation

It is disappointing that past and current Australian Government inquiries and reviews have given little prominence to the growth of social enterprises and the infrastructure required to foster social innovation. The *Venturous Australia* report on Australia's national innovation system in 2008 provided a substantial blueprint for generating innovation in the business sector but did not adequately address innovation in the social sector beyond recognition that nonprofit organisations and social enterprises may also be considered to be businesses. The subsequent innovation policy agenda to 2020 gave more emphasis to environmental and social outcomes, and to improving the lives of Australians but lacked depth of understanding of the specific requirements for generating and promoting social innovation.

Much more needs to be done to create the conditions that foster innovation and addresses our cultural, community and environmental needs. Programs and initiatives might seek to:

- build a collaborative culture within Australia for achieving social outcomes;
- enable knowledge exchange via university, sector, business and government partnerships; and
- provide long term capital for social enterprises to underwrite risk, research and development in services and programs.

A tailor-made, formal framework for exchange and learning is required, otherwise there will be limited advantage to be gained from the valuable research and development, innovative programs and services, and organisational excellence that exists within the social sector.

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## Sector accountability

A common purpose shared by governments, businesses and philanthropists is to see a tangible return on their investment of human and financial resources in the social sector, to bring about change and deliver positive social and environmental outcomes. As evaluation methodologies (such as Social Accounting<sup>68</sup>, Results Based Accountability<sup>69</sup>, and the Social Return on Investment<sup>70</sup>) become more refined, accepted and embedded in practice, the social sector will be able to build stronger recognition

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<sup>68</sup> Social Audit Network, *Social Accounting & Auditing*, <http://www.proveandimprove.org/new/tools/socialaccounting.php> (accessed 30 May 2009)

<sup>69</sup> Mark Friedman, *Results Based Accountability* [http://www.raguide.org/RA/one\\_pager.htm](http://www.raguide.org/RA/one_pager.htm) (accessed 30 May 2009)

<sup>70</sup> Roberts Enterprise Development Fund, *Social Return on Investment* <http://sroi.london.edu/Measuring-Social-Impact.pdf> (accessed 30 May 2009)

and influence for its endeavours. The goal of achieving, and measuring, impact needs to be a core principle for any proposed regulatory and infrastructure reforms.

A more rigorous approach to evaluation will help to address the public and government demand for increased levels of transparency and accountability by nonprofit organisations and social enterprises. The sector's willingness to embrace improved disclosure needs to be supported by streamlined reporting and regulatory requirements, with the expectation that this will generate trust and attract increased investment by governments, business and philanthropists in the social sector.

There is a strong argument for the introduction of a national reporting framework for the social sector. Some flexibility needs to be built in to accommodate variability of activity, but fundamentally the substance of reporting should be consistent across the whole sector and enable comparisons of the cost-effectiveness of organisations and their projected social and environmental impact. More streamlined reporting will assist both the general public and the more sophisticated social investor in their selection and assurance of charities, nonprofit organisations and social enterprises. It is clear that many individual and corporate donors seek such transparency.

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## Enabling private philanthropy

Philanthropy in Australia is growing and maturing. Increased numbers of individuals and families now participate through private charitable trusts, as evidenced in the accumulation of over \$1 billion in assets held by some 769 Prescribed Private Funds (PPFs). The Treasury's *Inquiry into the Integrity of PPFs* has raised questions about the extent to which otherwise taxable income should be held in long term charitable structures whereby the annual income is distributed to charities and the capital is retained.<sup>71</sup>

Whilst Treasury's recent audit of PPFs identified some inappropriate transactions and gaps in trustees' understanding of their obligations, the overall PPF initiative has been highly successful in building a culture of philanthropy. The principle of providing clearer guidance and improved transparency is welcome. It needs to be recognised, however, that an administrative burden will most likely accompany greater publicity. Changes that help to clarify trustee rules and obligations, improve accountability, and enable choice of fund structures and the flexibility to transfer between funds, would certainly enhance the integrity of these private philanthropic trust funds.

The suggestion by Treasury that up to 15% of annual income must be distributed to charities, could have the unfortunate effect of eroding the capital base of these funds, effectively undermining the principles of structured giving. It is important that the generous intentions of businesses, families and individuals seeking to make donations through strategic, intergenerational arrangements, are honoured by the Government's continued commitment to tax deductibility and appropriate regulation, and also by the social sector's commitment to improved accountability for donations received.

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<sup>71</sup>Commonwealth Treasury, *Improving the integrity of Prescribed Private Funds (PPFs)*, Discussion Paper, November 2008 <http://www.treasury.gov.au/contentitem.asp?NavId=002&ContentID=1444> (accessed 5 March 2009)

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## Conclusion

Governments, businesses and philanthropists working in partnership with nonprofit organisations and social enterprises have the potential to respond effectively to intransigent social and environmental problems and provide valuable life-affirming experiences for the broader community. Since coming to office in November 2007, the Rudd Labor Government's social inclusion agenda has driven a whole-of-government approach to new policy initiatives.

Much of the Government's agenda is seen through the prism of its commitment to social inclusion and the reduction of social disadvantage. It is important, however, to recognise and acknowledge the broader, historical significance of the charitable, voluntary and community engagement that underpins our society, and the diverse ways in which citizens choose to participate in nonprofit organisations and social enterprises. An active civil society accrues significant social benefits by advancing community involvement, meeting fundamental needs and encouraging people to strive for a better future.

The Australian Government has a critical role to play in fostering an environment that supports the social sector. Equally, leaders in the social sector have the responsibility, and the opportunity, to influence how their operating environment is shaped. What is clear from the numerous Government inquiries to date is that there remains much that needs to be done to properly regulate and encourage growth, build capacity and foster innovation in the social sector. By taking these important reform initiatives the Australian Government, in partnership with nonprofit organisations and social enterprises, will ensure Australians benefit from the power of the social sector to improve our cultural, social and environmental wellbeing, and our economic prosperity.

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## Appendix

<b>SCHEDULE OF CURRENT AUSTRALIAN GOVERNMENT INITIATIVES AND INQUIRIES</b>				
<b>Topic</b>	<b>Responsibility</b>	<b>Established</b>	<b>Completed</b>	<b>Relevant sector grouping</b>
<b>Social Inclusion Principles</b>	Department of Prime Minister & Cabinet	November 2007	November 2008	Community social welfare organisations
Department of the Prime Minister & Cabinet, <i>Social Inclusion Principles for Australia</i> , November 2008 <a href="http://www.socialinclusion.gov.au/Pages/default.aspx">http://www.socialinclusion.gov.au/Pages/default.aspx</a>				
<b>National Compact</b>	Department of Families, Housing, Community Services and Indigenous Affairs	August 2008	December 2009	Community social welfare organisations
Australian Council of Social Services, <i>National Compact Consultation: Final Report</i> , October 2008 <a href="http://www.socialinclusion.gov.au/A_National_Compacthtm">http://www.socialinclusion.gov.au/A_National_Compacthtm</a>				
<b>Disclosure Regimes</b>	Senate Standing Committee on Economics	June 2008	December 2008	Social sector
The Senate Standing Committee on Economics, <i>Disclosure Regimes for Charities and Not-for-profit Organisations</i> , December 2008 <a href="http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/index.htm">http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/index.htm</a>				
<b>Prescribed Private Funds</b>	The Treasury	November 2008	October 2009	Philanthropists and social sector
Commonwealth Treasury, <i>Improving the Integrity of Prescribed Private Funds (PPFs)</i> , Discussion Paper, November 2008 <a href="http://www.treasury.gov.au/contentitem.asp?NavId=002&amp;ContentID=1444">http://www.treasury.gov.au/contentitem.asp?NavId=002&amp;ContentID=1444</a> Commonwealth of Australia, <i>Exposure Draft Tax Laws Amendment (Prescribed Private Funds) Bill 2009: Explanatory Material</i> , May 2009 <a href="http://www.treasury.gov.au/documents/1541/PDF/090514%20-%20EM%20-%20master%20update%203%20(consultation%20version).pdf">http://www.treasury.gov.au/documents/1541/PDF/090514%20-%20EM%20-%20master%20update%203%20(consultation%20version).pdf</a>				
<b>Financial Reporting by Unlisted Public Companies</b>	The Treasury	June 2007	December 2009	Nonprofit organisations that are companies limited by guarantee
Commonwealth Treasury, <i>FINANCIAL REPORTING BY UNLISTED PUBLIC COMPANIES</i> , DISCUSSION PAPER, June 2007 <a href="http://www.treasury.gov.au/contentitem.asp?ContentID=1269&amp;NavId=037">http://www.treasury.gov.au/contentitem.asp?ContentID=1269&amp;NavId=037</a>				
<b>Henry Tax Review</b>	The Treasury	May 2008	December 2009	Social sector
Commonwealth Treasury, <i>Australia's Future Tax System</i> , Consultation Paper, December 2008 <a href="http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/reference.htm">http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/reference.htm</a>				

Topic	Responsibility	Established	Completed	Relevant sector grouping
<b>National Innovation Scheme</b>	Department of Innovation, Industry, Science and research	January 2008	August 2008	Social enterprises and nonprofit organisations with significant revenue and employment
Cutler & Company, <i>Venturous Australia : Building Strength in Innovation</i> , August 2008 <a href="http://www.innovation.gov.au/innovationreview/Documents/NIS-review-web.pdf">http://www.innovation.gov.au/innovationreview/Documents/NIS-review-web.pdf</a> Commonwealth of Australia, <i>Powering Ideas: An Innovation Agenda for the 21<sup>st</sup> Century</i> , May 2009 <a href="http://www.innovation.gov.au/innovationreview/Documents/PoweringIdeas_fullreport.pdf">http://www.innovation.gov.au/innovationreview/Documents/PoweringIdeas_fullreport.pdf</a>				
<b>Carbon Pollution Reduction Scheme</b>	Department of Climate Change	December 2008	2011	Social sector
Commonwealth Department of Climate Change, <i>Carbon Pollution Reduction Scheme</i> , White Paper, December 2008 <a href="http://www.climatechange.gov.au/emissionstrading/index.html">http://www.climatechange.gov.au/emissionstrading/index.html</a>				
<b>Human Rights Consultation</b>	Attorney-General's Department	December 2008	August 2009	Community social welfare organisations and overseas aid organisations
Commonwealth Attorney-General's Department, <i>National Human Rights Consultation</i> , December 2008 <a href="http://www.humanrightsconsultation.gov.au/">http://www.humanrightsconsultation.gov.au/</a>				
<b>Counter-Terrorism Financing</b>	Attorney-General's Department	Mid 2008	Mid 2009	Overseas aid organisations in particular
Commonwealth Attorney-General's Department, <i>Guidance for Nonprofit Organisations on Counter-Terrorism Financing (draft)</i> , February 2009 <a href="http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering_Non-ProfitOrganisations">http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering_Non-ProfitOrganisations</a>				
<b>Contribution of the Nonprofit Sector</b>	Productivity Commission	March 2009	December 2009	Social sector
Productivity Commission, <i>Contribution of the not for profit sector</i> , Issues Paper, April 2009 <a href="http://www.pc.gov.au/projects/study/not-for-profit">http://www.pc.gov.au/projects/study/not-for-profit</a>				

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## About the Author

Catherine Baldwin is a respected social and commercial practitioner with over 20 years experience in social sector leadership roles. Catherine's career combines experience in the management of cultural organisations, the development of new business and social enterprises, as a program director for a federal government authority, the Australia Council, and most recently, in philanthropy as the Head of the Perpetual Foundation.

As the Chief Executive of a professional association, the Institute of Actuaries of Australia and the independent think tank, the Committee for Economic Development of Australia, Catherine has been responsible for public policy and research programs. Her policy experience encompasses superannuation and retirement incomes, health financing, climate change, corporate governance, defence industry, and insurance sector reform.

Catherine was a member of the ASX Corporate Governance Council that developed the governance principles and reporting guidelines adopted by listed companies in Australia. She was responsible for leading a comprehensive review of the code of conduct and practice standards for the actuarial profession following the collapse of the insurer HIH and worked closely with the Australian Prudential Regulation Authority on new industry standards. As the Head of the Perpetual Foundation, Catherine was responsible for publishing research on leadership and management in the social economy, and conducting a program of public forums to profile best practice in philanthropy.

Catherine is currently completing a Masters of Public Policy at the University of Sydney. She is a graduate of the AICD Company Directors' Program, a member of Women Chiefs of Enterprises International, a board director of Outcomes Australia, and Chairman of the national peak body, Young People and the Arts Australia. Catherine has been chosen to be the inaugural Chairman of the Transfield Foundation.

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