

## **Contribution of the Not for Profit Sector**

### **Submission to the Productivity Commission's Draft Research Report**

#### **Introduction**

Social Traders, representing a coalition of organisations committed to supporting the growth of social enterprises in the Australian economy, welcomes the opportunity to comment on the Productivity Commission's draft research report. Our coalition partners include Jobs Australia, Social Ventures Australia, Social Firms Australia, Wise Employment, National Employment Services Association, School for Social Entrepreneurs and Adult Multicultural Education Service.

Each of our partners shares an interest in the potential of social enterprises to make an effective contribution to the Australian economy. Partners also consider the Social Enterprise Sector as a valuable component of the Federal Government's approach to addressing economic and social exclusion experienced by some of our most disadvantaged individuals and communities.

The Not for Profit (NFP) Sector is one of the primary drivers in the development of social enterprises across Australia. In fact many NFP organisations use social enterprises to deliver a significant proportion of their services. You need look no further than large NFP organisations like The Brotherhood of St Laurence, Mission Australia or Wise Employment to see this in action.

Social Traders, and its coalition of partners, acknowledges the importance of the Productivity Commission's draft research report and recommendations, and the potential implications for a fast growing and complex Social Enterprise Sector.

Although the report does not go into the Social Enterprise Sector in great detail, we felt it appropriate to respond to a number of the Commission's recommendations as the NFP and Social Enterprise Sectors are strongly interconnected, and significant developments in the NFP Sector will no doubt impact on the work of social enterprises throughout the country.

Our submission, prepared in consultation and with input from our partner organisations, provides a general statement from partners on the draft research report and then sets out specific responses to the Commission's recommendations. We have attempted to base our responses on the issues most pertinent to social enterprises but these responses inevitably relate to the broader NFP Sector.

#### **General Statement**

Social Traders, and its partner organisations, commends the Productivity Commission on the draft research report on the NFP Sector in Australia. The report, and the recommendations themselves, provide much food for thought on the future of the sector and its role in the broader Australian economy.

The Social Enterprise Sector plays a significant role in the day to day operations of NFP organisations as well as being a growing sector in its own right. In Social Trader's submission to the Commission on the NFP issues paper, we highlighted that 2006-07 ABS survey data estimated that 38 per cent of NFP income was derived from the sale of goods and services, excluding government purchasing. Indeed, the draft research report cites the '*Giving Australia*' survey of 500 NFPs (*FACS 2005*), estimating that 29 per cent of NFP organisations operated some form of commercial venture and in 87 per cent of these the venture was directly connected to their primary community purpose.

We believe that social enterprise can play a vital role in the future success of the NFP Sector through the development of new and innovative approaches to trading and service delivery, mixed economy approaches to NFP income sources, and the application of new business models within the NFP Sector.

### **Developing a Framework for the Not for Profit Sector**

We believe that the starting point for the NFP Sector should be the development of an agreed NFP Strategy across all critical stakeholders. This strategy should be developed and delivered through the Commission's proposed Office for Not for Profit Sector Engagement and contain strategic priorities, mechanisms and processes to support the proposed approach, and an action plan that sets out the key tasks to be undertaken over an agreed timeframe. We believe that a number of Commission recommendations have the potential to be 'housed under the one roof' and gain from the horizontal integration of each priority. Priorities should include the following –

- initiate and manage the proposed Information Development Plan (IDP) **(Recommendation 5.1)**
- ensure that any compacts between the Australian Government and the NFP Sector are supported through solid mechanisms for implementation, monitoring and evaluation **(Recommendation 13.2)**
- develop new forms of engagement with the NFP Sector in government contracting **(Recommendation 12.2)**
- explore new forms of company formation that can support the NFP Sector, and social enterprise development, and connects with the Australian Government's broader responsibilities for tax and regulation **(Recommendation 6.1)**
- explore new models of financial support for the NFP and Social Enterprise Sectors including access to capital investment, investment models for social innovation and Public/Private Sector investment partnerships **(Recommendation 7.4)**
- develop a Social Enterprise Action Plan that raises awareness and understanding of the sector, supports the establishment of new social enterprises and explores new market opportunities for the sector
- deliver the proposed Centre for Community Service Effectiveness through a government procurement model **(Recommendation 5.4)**

We strongly agree that the proposed Office for Not for Profit Sector Engagement should be established within the Prime Minister's portfolio for an initial term of five years **(Recommendation 13.2)** It will be important that any new office has the authority to work across government departments and the NFP Sector as it attempts to improve awareness, connection and broader community outcomes.

We believe that government fulfils a variety of roles in its interaction with the NFP Sector including regulator, purchaser, investor and enabler. It is our contention that the proposed Office for Not for Profit Sector Engagement should concentrate its activity in the investor and enabler roles. This would allow existing regulator and purchaser relationships between government departments and the sector to continue with “tailored” advice provided by the proposed office, this advice following the strategic priorities and actions set out in a new NFP Sector Strategy.

## **A Social Enterprise Action Plan**

We believe that the Social Enterprise Sector has the potential to make a substantial contribution to the economy as well as providing additional outcomes that can benefit Australian society more generally. Social Enterprises are social benefit businesses that trade to fulfil their missions. The motivations and business models for social enterprises vary, as does the amount of income they derive from trade. Social enterprises work toward sustainable outcomes by applying market-based approaches to today's social challenges.

Social enterprises are diverse; they work in a wide range of industries taking different legal forms and delivering a mix of social outcomes. Perhaps the best known and most prolific social enterprises in Australia are the “opportunity shops” that are found in every suburb or town, credit unions, community banking and Australian Disability Services as well as people participating in everyday enterprises like food cooperatives. Social enterprises exist for very different social purposes. The motivations for social enterprise include:

- enterprises providing training and employment opportunities for disadvantaged jobseekers
- enterprises providing goods and services in areas of market failure
- enterprises responding to exploitation through fair trade
- enterprises responding to environmental issues, for example, waste management
- enterprises raising revenue trading activities to be reinvested into community services

We propose that a Social Enterprise Action Plan, similar to the plan established in the UK in 2006, is required to unearth the true potential of the sector here in Australia. We believe that a coherent action plan, developed across a range of critical stakeholders, would provide a framework for sector activity through a set of agreed strategic priorities and subsequent actions. It is our view that the close interrelationship between the Social Enterprise and NFP Sectors be acknowledged and that the proposed Social Enterprise Action Plan is a component part of a broader NFP Strategy, similar to the Social Enterprise Sector in the UK being a component of the wider UK Social Economy.

As an example, the *Social Enterprise Action Plan – Scaling New Heights (UK Government 2006)* sets out the following strategic drivers to encourage the growth of the sector –

- Foster a culture of social enterprise
- Ensure that the right information and advice are available to those running social enterprises
- Enable social enterprises to access appropriate finance
- Enable social enterprises to work with government

More detailed information on the *Social Enterprise Action Plan – Scaling New Heights* can be accessed via the following web link

[http://www.cabinetoffice.gov.uk/media/cabinetoffice/third\\_sector/assets/se\\_action\\_plan\\_2006.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/se_action_plan_2006.pdf)

## **Working with Governments**

We strongly support the Commission's recommendation that Australian governments choose the model of engagement with NFPs that best suits the characteristics and circumstances of the service being delivered (**Recommendation 12.1**). In many cases the purchaser-provider model in a competitive marketplace with clear outcomes provides the preferred option. However, we agree that there can be an over reliance on the model that results in a diminished understanding of the needs of clients, the investment levels required for sustainable outcomes, and the length of time it can take to capture those outcomes.

We strongly support the recommendation that Australian governments move toward more collaborative relationships with the NFP Sector when a market based approach is not feasible (**Recommendation 12.2**). We also believe that this recommendation is appropriate to any relationships with social enterprises engaged in activities where they have designed their services to meet needs not addressed by the market. In many cases NFPs and social enterprises are delivering services to support individuals and communities facing barriers to employment, health inequalities, financial exclusion, substance misuse and a range of associated issues that lead to a disconnection with mainstream society. It is in circumstances like these that more innovative solutions are required to be found through improved collaborations that commit all stakeholders to be part of the solution. The Productivity Commission's recommendation on this is to be commended and the specifics of collaborative design, embedded evaluation, joint review, shared risk and funding flexibility in service delivery provides the building blocks for a strong commitment across all stakeholders to improve community outcomes.

The following case studies provide a flavour of innovative procurement approaches here in Australia

### **Case Study 1 - Public Housing Tenant Employment Clause**

*The Victorian Department of Human Services (DHS) Housing Services uses social procurement in a range of service contracts. They have developed a public housing tenant employment clause which is inserted into \$100 million worth of public housing contracts targeting cleaning, security and property maintenance. The clause requires that a percentage of the workforce delivering the contract is public housing tenants. The proportion varies depending on the type of works and is universally below 10%. Most of this work is undertaken by commercial businesses. Since 2003 this clause has created opportunities for hundreds of public housing tenants to obtain ongoing work. The tenant employment clause is a legal clause which has now become accepted practice in DHS Housing Services delivery contracts.*

## **Case Study 2 – DHS Vic Buying from Social Enterprises**

*DHS chooses to buy up to \$4 million per year of improvements to public housing properties using social procurement. These works are made available exclusively to social enterprises operating in Neighbourhood Renewal (NR) areas. The service specifications are identical to the specifications for commercial providers.*

*In socially procuring, NR seeks to stimulate a range of social outcomes including -*

- *local training and employment for unemployed residents*
- *community building through the development of successful initiatives that create jobs in areas experiencing high unemployment*
- *capacity building of social enterprises to grow and deliver greater social returns*
- *retaining money spent on local works in the pockets of people living in the local area*
- *The social enterprises must meet the same pre-conditions and pricing requirements as any other contractor tendering to DHS. The only difference in the process is that -*
- *only one organisation is approached to quote*
- *they are required to identify the social outcomes that they will provide*
- *there is greater scope for flexibility around contract timelines*

*Procuring from social enterprise by Neighbourhood Renewal requires an exemption from the existing procurement policy by the Secretary of DHS.*

The Productivity Commission's recommendation on new forms of engagement in the procurement of goods and services has the potential to build upon the *Australian Government's Procurement Statement (July 2009)*. In the statement, the Australian Government recognises that by adjusting procurement models there is the capacity to impact positively on some of Australia's more disadvantaged individuals and communities.

***“The Australian Government is committed to expanding opportunities for all Australians, especially those from communities suffering higher levels of disadvantage. The Government believes that procurement policies can play a role in expanding opportunities for disadvantaged Australians”***

The procurement statement highlights work with disability employment providers and larger projects in areas with significant Indigenous populations that can provide local training and employment opportunities. This approach could be extended to situations where a market based approach is not available or appropriate, as identified by the Commission, and where a more collaborative model of service delivery has a greater chance of achieving sustainable outcomes. Again, we believe that this approach is required where individuals and communities face “wicked” problems leading to social and economic exclusion from mainstream society.

The UK has many examples where what are termed “Community Benefit” clauses have been included in the procurement of contracts in disadvantaged communities. This in some ways extends on from the Australian Government's approach to larger projects in indigenous areas and also has the potential to be applicable in recognised areas of disadvantage across Australia. We would also add that it is only through a commitment to improved community outcomes by all parties involved in the procurement process that well intentioned words translate into concrete opportunities.

The following provides an example of a Community Benefit clause on training and employment opportunities for disadvantaged jobseekers inserted into a Raploch Urban Regeneration Company (URC) construction contract (Scottish Government 2008)

### **Training and Employment**

1.1 Employed status new entrant trainees will comprise either a minimum of 10% of the person-weeks required to deliver the works or a minimum of 157 (no.) whichever is the greater, and that wherever possible such new entrant trainees will be recruited from Employment Connections, EmployAbility Stirling or another agency named by the URC where:

a) **A person-week** is the equivalent of one person working for 5 days either on site, or through a mix of on-site work and off-site training. The total person-weeks utilised on the contract to include time provided by management and professional staff, trades and operative staff, and ancillary staff.

b) **A new entrant** trainee is a person that is leaving an educational establishment ( e.g. school, college or university) or a training provider, or a non-employed person that is seeking employment that includes on-site training and assessment or offsite training, or a mix of these.

c) "Employment Connections" is an employment and training information project with offices at 4 Woodside Road, Raploch, Stirling, FK8 1RF

d) "EmployAbility Stirling" is an advice employment project for those with disabilities, with offices at Langgarth, Viewforth, Stirling FK8 2ET.

1.2 Each new entrant trainee is to have a written Training Plan. This Training Plan is to be updated on a monthly basis and made available for inspection by the client representative at any time.

1.3 Every vacancy on site, including those with sub-contractors, is to be notified to Employment Connections and EmployAbility Stirling (and/or other agencies named by the client representative .

1.4 Provide unwaged work experience places for those people participating in national construction training programmes such as New Deal Training for Work, Skillseekers and Modern Apprenticeships.

1.5 Provide employment opportunities for people with a disability, wherever possible recruited from EmployAbility Stirling (and/or other agencies named by the client representative).

We agree that the length of service agreements or contracts should reflect the period required to achieve agreed outcomes as opposed to having arbitrary or standard contract periods (**Recommendation 12.5**). We also agree that an explicit risk management framework be developed around service delivery or contracts that allocates risk to the party best able to bear that risk, and that agreed protocols across parties are in place to manage that risk over the life of the contract (**Recommendation 12.6**).

We strongly agree with the Commission that Australian governments urgently review and streamline their tendering, contracting, reporting and acquittal requirements in the provision of services to reduce compliance costs (**Recommendation 12.7**). We suggest that the proposed Office for the Not for Profit Sector Engagement would be well placed to work alongside government departments and the NFP Sector to unpack a number of contentious areas for both parties in the purchaser provider split. A selection of different relationship models between government and the sector should be identified; each model should then be reviewed across compliance requirements and agreement between parties reached on where the compliance burden can be reduced. This work could then be written up and used as case study/guidance material for both government departments and the NFP Sector.

We agree with the Commission's recommendation that Australian governments should minimise compliance costs and maximise the value of data collected by implementing a reform agenda for the reporting and evaluation requirements for NFP organisations delivering government funded services - 'report once, use often' (**Recommendation 5.3**). We also support the Commission's recommendation on performance evaluation materials being available to service providers to improve learning and benchmark performance (**Recommendation 5.3**). We would also say that the proposed Office for Not for Profit Sector Engagement would be well placed to lead on this work and to act as broker between government departments and the NFP Sector in achieving an agreed outcome and delivering on the commitment that this data and information is available to the broader sector.

### **Accessing the Right Finance**

Access to capital investment, and other forms of investment finance for start up or innovation, is required for both the NFP Sector and social enterprises. We strongly support the Productivity Commission's recommendation that a joint working party made up of all critical stakeholders is established to explore obstacles to NFP organisations raising capital and to evaluate appropriate options to access capital by the sector (**Recommendation 7.4**). We would also propose that the terms of reference for this work includes the concept of government as an investor and an exploration of models of financial support that would, for example, encourage innovation or new start up in both the NFP and Social Enterprise Sectors. Australian governments do provide investment support; for example, the Victorian Government has invested \$10 million over six years to grow the Social Enterprise Sector, but there are also a number of international examples of financial support models that could inform our thinking on appropriate mechanisms in the Australian context. We are very interested in exploring future models of financial support for the Social Enterprise Sector here in Australia and would be interested in forming any collaboration with critical stakeholders to advance the collective thinking on the subject matter.

We support the Commission's recommendation to explore options to expand existing programmes that encourage and support social innovation (**Recommendation 9.1**). We agree with the option of expanding the Cooperative Research Centres program and encouraging relevant agencies to create Social Innovation Funds to support research collaboration on innovative solutions to what the Commission terms 'wicked' social problems (**Recommendation 9.1**). We would also add that any future innovation funds should align with the medium to long term planning and strategic priorities contained in the proposed NFP Strategy and Social Enterprise Action Plan.

We support the Commission's recommendation to widen the scope for gift deductibility, subject to considerations of affordability, to include all charitable institutions and funds as endorsed by the proposed national registrar (**Recommendation 7.2**). We believe that this should particularly be the case for NFP organisations and social enterprises that are engaged in activities that alleviate economic and social exclusion.

We would also add that gift deductibility status should also be available to social enterprise intermediary organisations. This would help prepare the ground for future development of financing models that are specifically targeted at growing the Social Enterprise Sector and its impact on a range of activities targeting disadvantaged individuals and communities. Intermediary organisations have the capacity to broker solutions that government, business and the NFP Sector cannot in their own right. For example, an intermediary organisation may be best placed to develop and establish an NFP or social enterprise investment fund that harnesses resources across all sectors and is specifically tailored to building the capacity of individual enterprises.

### **Data, Information and Measurement**

We support the initiation of an Information Development Plan (IDP) for the NFP Sector (**Recommendation 5.1**). It is essential that an agreed framework is established that can measure the impact of NFP Sector activities, including 'spill over' community wellbeing outcomes (**Recommendation 5.2**). It will also be important that the IDP, and the data gathered, is available to a range of stakeholders with an interest in the development of the NFP Sector as a key component of the broader Australian economy.

We also agree that Australian Government's approach to learning through improved evaluation of NFP, and social enterprise, activities has the potential to encourage new program design and improved outcomes (**Recommendation 5.2**). However, it is important that the measurement of outputs and outcomes is affordable to small, medium and large organisations. The Commission makes an important point that this proposed evaluation activity requires adequate funds to maximise its impact on the work of the sector.

### **Developing the Sector**

We welcome the Commission's recommendation to consider the expansion of Australian government's business support programs to NFP organisations engaged in social enterprise activities (**Recommendation 9.3**). We would also propose that this approach has the potential to support social enterprises with significant turnovers not categorised as NFPs. We would suggest that international models are examined to better understand the balance that should be struck between mainstream business advice and specialist enterprise support when supporting the Social Enterprise Sector.

We believe that investment to support new and smaller scale social enterprises should be channelled to specialist social enterprise support agencies currently active in the sector. These agencies enable a more hybrid approach to enterprise development, striking a balance between business disciplines and community aspirations. A development programme should also be established where social enterprise specialists and mainstream business advisers come together to share learning on each others work.

Somewhat predictably, we would also like to highlight the important role that intermediary and second tier support agencies play in assisting both NFP organisations and social enterprises to reach their undoubted potential. Many organisations are so extended in the delivery of much needed services that they have limited opportunity to adequately reflect on some of the broader issues impacting on their work and the sector as a whole. Intermediary and second tier support organisations can and do breach that gap on many occasions by, for example, advocating on

behalf of a sector, providing policy development expertise, and establishing a focal point for networking and collaboration.

Insofar as it impacts on the Social Enterprise Sector, we support the proposal that the Community and Health Industry Skills Council undertake a number of workforce planning activities to support the NFP Sector (**Recommendation 10.3**). We also propose that this area of workforce development should connect strongly with the work of the proposed Office for the Not for Profit Sector Engagement.

The Commission's proposal that Australian governments should base their costings for the purchase of community services on relevant market wages for equivalent positions, as well as other relevant costs in the delivery of community services, is strongly supported by partners (**Recommendation 10.2**). We believe a number of social enterprises would benefit from this approach and that overall both the NFP and Social Enterprise Sector would see a substantial gain in terms of reduced staff turnover, training and recruitment costs, resulting in a tangible improvement in the quality of the final service delivery.

Again, insofar as it impacts on the Social Enterprise Sector, we support the Commission's proposal that a system of "Working with Vulnerable people Checks" is explored (**Recommendation 10.1**).

### **Smarter and Simpler Regulation of the Sector**

We strongly support the Commission's proposals to consolidate and simplify the regulation of the NFP Sector and its inevitable knock-on impacts on the Social Enterprise Sector.

We support the establishment of a one-stop shop for Commonwealth regulation by consolidating various regulatory functions into a new national Registrar for Community and Charitable Purposes Organisations (**Recommendation 6.4**)

We would contend that, consistent with the simplification and consolidation theme, the proposed Registrar is a separate agency and that agency subsumes the Office of the Registrar for Indigenous Corporations.

We support the Commission's (**Recommendation 6.1**) that -

*"The Australian Government should establish a Commonwealth incorporated associations legal structure for not-for-profits. The new legal structure would assist not-for-profits, in particular those operating across state and territory boundaries, that do not wish to be companies limited by guarantee but wish to be incorporated at the Commonwealth level.*

*Australian governments should ensure that incorporation legislation is amended to allow not-for-profits to migrate from one form of legal entity to another and to migrate between jurisdictions.*

*State and territory governments should continue to reduce unnecessary compliance requirements for incorporated associations".*

We would recommend that there is further exploration on whether Australia requires a new legal form for small unincorporated associations. We are keen to participate in this process but would also add that the proposed Office for Not for Profit Sector Engagement acts as the interface between the NFP Sector and regulatory authorities if this work proceeds

We agree that the Australian Government should adopt a statutory definition of charitable purposes (**Recommendation 6.3**).

We support the Commission's proposal (**Recommendation 6.2**) to initially involve the COAG Business Regulation and Competition Working Group in -

- agreeing and implementing harmonised fundraising regulation and mutual recognition across Australia
- supporting the development of a fund raising register for cross jurisdictional fundraising organisations, to be administered by the proposed national Registrar
- endorsing the adoption by all governments of the Standard Chart of accounts for reporting by NFP organisations in receipt of government grants or service contracts
- ensuring that the Standard Business Reporting initiative be expanded to include reporting requirements for NFP organisations

## Conclusion

We welcome the work of the Productivity Commission and the *Draft Research Report – Contribution of the Not for Profit Sector*. We believe it is a timely piece of work and lays the foundation stones for an overarching strategic framework that can assist all stakeholders and improve the NFP Sector's contribution to both the Australian economy and society.

We believe that the Social Enterprise Sector has the potential to add value to the work of the NFP Sector through new and innovative ways of doing business. The sector also has the capacity to engage with some of our most socially and economically disadvantaged communities and to come up with sustainable outcomes that can make a difference. We are committed to measuring that difference and again commend the Commission for its recommendations in the area of data, information and measurement.

Social Traders, and its partners, would also highlight that Australia has some great examples of effective collaboration involving the Public, Business and Community Sector. We strongly support the Productivity Commission's recommendation on new models of engagement between Australian governments and the NFP Sector and that this is another step forward in strengthening our commitment to continuous improvement in the way we all deliver our services to individuals and communities across Australia.

Our proposal for a Social Enterprise Action Plan is about creating a platform that all critical stakeholders can use as the basis for an agreed medium to long term roadmap for the Social Enterprise Sector. We have experienced the energy and commitment that has taken the Social Enterprise Sector to where it is now. We believe the time is right to create the framework that will channel these qualities and move the Social Enterprise Sector forward as a new way of doing business in the Australian context.