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**Submission in Response to the**

***Scoping study for a national not-for-profit regulator***

**February 2011**

**Introduction**

This submission briefly outlines a response to the consultation paper: *Scoping study for a national not-for-profit regulator*. It has been prepared through a process of consultation with the membership of the Community Council for Australia (see Appendix 1 list of CCA members) and key organisations in the not-for-profit sector.

It is important to note that this submission does not replicate the policy positions outlined in the individual submissions from CCA members. The focus adopted in this submission is to describe the ideal ‘one stop shop’ national not-for-profit regulator, and then consider how to move towards this ideal. In keeping with the key themes outlined in the scoping study, this submission is set out under the following sub-headings:

1. Goals of national regulation
2. Scope of national regulation
3. Functions of national regulator
4. Form of the national regulator
5. Implementation - where to from here?

CCA recognises that establishing a new regulator requiring referral of powers and new Federal structures is not something that can happen overnight. At the same time, CCA recognises that there are tremendous potential gains for governments, not-for-profits and the community if regulatory requirements can be applied more effectively and the current onerous requirements can be reduced.

CCA welcomes the opportunity to provide input into this consultation process on not-for-profit (NFP) regulation and is more than willing to engage in further discussion about any of the issues raised in this submission.

**The Community Council for Australia**

The Community Council for Australia is an independent, non-political, member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the not-for profit sector in Australia. CCA seeks to change the way governments, communities and the not-for-profit sector relate to one another. This includes establishing a regulatory environment that works for community organisations, not against them.

The mission of CCA is to lead the sector by being an effective voice on common and shared issues affecting the contribution, performance and viability of not-for-profit organisations in Australia, through:

* promoting the values of the sector and the need for reform
* influencing and shaping relevant policy agendas
* informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
* working in partnership with government, business and the broader Australian community to achieve positive change.
1. **Goals of national NFP regulation**

The NFP sector contributes around $43 billion to GDP per annum, encompasses over 600,000 organisations ranging in size from large to very small, and employs almost 900,000 staff, or eight per cent of all employees in Australia. These figures only tell a small part of the story. The real value of the NFP sector is in the often unattributed contribution to the quality of life we all experience in Australia. NFPs are at the heart of our communities and are what makes us resilient as a society.

Despite the fact that the NFP sector is bigger than other sectors such as tourism, agriculture or communications, it has not benefitted from the kind of strategic reform that these other sectors have experienced. As a consequence, there is an immense amount of wasted time, effort and energy associated with the running of many NFPs across Australia. A great deal of this waste is driven by poor government administration imposing onerous reporting and accountability requirements that serve very limited purposes. This is compounded by the range of regulatory bodies at each level of government, and the seemingly unquenchable thirst from bureaucracies and others for more information about the outputs, rather than the impact, of NFP organisations.

The issue of NFP reform has been on the agenda of Federal and State governments for well over a decade. Recent reviews, including the Productivity Commission Report into the Contribution of the Not-For-Profit Sector in 2010, the Senate Inquiry into Disclosure Regimes for Charities and Not-For-Profit Organisations in 2008, and the Review of Australia’s Future Tax System in 2010, all made significant recommendations about the need for reform within the NFP sector and within government. All supported the idea of a one stop shop regulator for the NFP sector.

There are very real savings to be made in streamlining government interactions with the not-for-profit sector, although achieving maximum savings will require a significant initial investment. At any given moment there are hundreds, if not thousands, of government officials around Australia seeking reports from NFPs or completing compliance information. These endeavours generate significant work resulting in countless hours of work for NFPs, but this work offers very limited benefit in terms of real accountability or transparency.

While the scoping study is a very useful starting point for discussion about NFP regulatory reform, it fails to acknowledge that most NFPs only exist because of the level of support they receive directly from their communities, including their clients or those they serve. Most have a higher community standing than the government. Most are transparent, more because they are part of their communities than because they fill in forms or compile reports that are sent off to central government offices to be filed away or listed on an obscure website. The real benefit of a national NFP regulator is not increased public confidence or even increased transparency; it is in reducing the massive expenditure on meaningless compliance activities from both government and NFPs. Reducing requirements for compliance activities will free up NFPs to concentrate more on what they do best: engaging with and supporting their communities. It will also deliver real savings to government.

The CCA strongly supports the idea of a national ‘one stop shop’ regulator for the NFP sector. The primary purpose of any national NFP regulator must be focused on reducing the administrative and regulatory burden imposed on NFPs while maintaining an appropriate level of public accountability.

1. **Scope of national regulation**

The scope of the national regulator should be informed by its core purpose or goal - to reduce NFP compliance costs while maintaining an appropriate level of public reporting.

The diversity of the NFP sector means the level of annual public reporting of activity by NFPs must be variable enough to encompass many different entities, ranging from small kitchen table groupings of like-minded community members seeking to address a local concern, right through to the major international charities operating with over $100 million annual turnover. Operating within a framework that imposes a range of different core requirements and requires reporting to different regulatory bodies for different activities increases compliance costs and creates real inefficiency, particularly when compared to the option of having a single regulator.

It is difficult to see why any NFP should be required to engage in a significant compliance process if their total annual turnover is less than $50,000. A $50,000 threshold applies before any organisation is required to register for GST. The establishment of thresholds is an important issue because the vast majority of Australia’s 600,000 NFPs would be under a $50,000 turnover threshold. While this kind of threshold would encompass hundreds of thousands of small NFPS, these same organisations contribute a very small percentage of the $43 billion annual turnover in the NFP sector. This means there are minimal economic risks in allowing the vast majority of NFPs to operate in a largely self-assessed regulatory framework.

What emerges in considering these issues is the need for a single NFP regulator operating a continuum of regulatory requirements encompassing the entire NFP sector, but with vastly different registration and reporting approaches according to annual turnover. Thresholds could be set for organisations; for example under $50,000 turnover, under $500,000 turnover, under $5 million turnover, under $50 million turnover, above $50 million turnover. This continuum approach is not unusual amongst regulators.

It is possible to envisage one annual compliance form requirement for all NFPs, but with various sections to be completed by different categories of NFPs according to their status and turnover. Thus a large Public Ancillary Fund may have to complete more details about assets and expenditure than a local netball club, while a major international charity might be required to complete all sections of the annual report and a smaller group of mental health carers operating as an incorporated charity would be required to complete only a small part of the compliance and registration requirements. This single annual report could be used by the Australian Taxation Office (ATO), the Australian Securities and Investments Commission (ASIC) or any other regulator, government departments and the broader community.

There are very few significant arguments against a national NFP regulator adopting this broad scope, except those relating to the practical difficulties of making it happen. The issue of how to best make the transition from the current unacceptable levels of regulation and reporting requirements is important, but the many challenges of implementation must not be used as an argument against trying to achieve the ideal model.

The starting point for any national regulator of the NFP sector is that all NFPs should be within its scope to ensure maximum gains through reducing compliance requirements and streamlining registration and regulation. All governments and all government departments should be required to use the one off annual report from each NFP as the basis for their own information collection, assessment and reporting. Collecting additional information from any NFP beyond what is collected through the NFP regulator should only be necessary when there is a specific purpose relating to a specific program or service, or where additional government contracts or agreements are in place.

1. **Functions of national regulator**

The functions of the NFP national regulator need to be driven by the purpose of the organisation – namely reducing the administrative and regulatory burden imposed on NFPs while maintaining an appropriate level of public accountability. It is not possible to describe in detail all the activities the NFP national regulator might engage in, but three core functions are fundamental to achieving the organisation’s purpose:

1. Reducing regulation

This is the area with the biggest challenge for any national regulator, but without success in this area, any new regulator risks simply imposing another compliance burden on NFPs with little, if any, real benefit.

Achieving a reduction in regulation will require the national regulator to obtain referral powers from States and Territories, as well as obtaining powers from national agencies such as the Australian Taxation Office.

Achieving this level of regulatory change will involve considerable work over a sustained period of time. It will also involve a level of expertise that will generally only be available in senior government officials who have experience worked to achieve regulatory change.

1. Appropriate reporting/information collection

The Productivity Commission and all other major inquiries into NFPs have noted the unreasonable compliance burden that falls on NFPs, particularly if they are involved with multiple government agencies at both a Federal and State level.

Reducing this reporting compliance burden will again require considerable work, not just in terms of regulation of NFPs, but also in relation to current government grant giving, procurement and project management approaches.

There is no data anywhere to tell us how many government officials are currently employed collecting and filing reports from NFPs, but even the most conservative estimate suggests there are thousands of people involved in these tasks. There is a significant amount of duplication, unnecessary red tape, and counterproductive micro-management from government officials.

The ‘report once and use often’ approach is clearly a desirable goal, but achieving this kind of outcome for NFPs will require a national regulator that is a strong advocate for a common set of appropriate reporting and compliance requirements across all levels of government.

1. Public accountability

The role of any regulator is to provide a reference point in relation to the organisations on which they seek to report. The effectiveness of the NFP national regulator will be judged in part by the degree to which it provides relevant, meaningful and accessible information on NFPs to the broader community.

Achieving this objective will require more than a government website listing NFPs and providing their latest reports. It will require active engagement and promotion through various media to a range of interest groups across government, NFPs and the broader community.

As with all effective communication projects, this aspect of the NFP regulator’s role will require establishment of an ongoing dialogue with all potential users including the NFP sector, constant data checking, updating and linking of information to other relevant information sources (such as the companies register).

Ideally all levels of government, as well as the broader community, would view the ‘one stop shop’ regulator as the single most important reference point for accurate, timely and useful information about NFPs.

1. **Form of the national regulator**

Given the purpose, scope and primary functions of the proposed NFP regulator outlined above, there are some real challenges in the way the NFP regulator might best be structured. The structure will have a direct impact not only on capacity to achieve the purpose and functions, but also on the way the NFP regulator will operate on a day to day basis.

CCA acknowledges the issues outlined in the scoping study in relation to current limitations of government expertise in the area of NFP regulation and the need to build on existing knowledge within areas such as the ATO. At the same time it seems improbable that a sub section of the ATO will be able to deliver on the regulatory functions outlined in this submission while maintaining the ATO culture and focus on capturing revenue for government.

Experience in Australia and internationally suggests government and NFPs are more likely to achieve real reform when they work together to a common goal. When the United Kingdom government under Prime Minister Tony Blair first established the Social Exclusion Unit the structure of the organisation was relatively unique. Specially recruited high level staff were drawn from both government and NFP organisations and reporting was direct to the Prime Minister with regular reports to Cabinet from the head of the Social Exclusion Board.

In Australia we have had more than a decade of reports calling for major reform of the regulatory environment impacting on NFPs. None have gained any traction. Generally they have either been driven by NFPs themselves seeking changes, or by government departments seeking their own version of reform.

If the new NFP regulator is created as a new section in an existing government department, it is hard to envisage how it can possibly drive reform across governments and across the NFP sector. Now is the time to meaningfully engage with both governments and the NFP sector to achieve real reform. This will require a new way of driving reform across governments.

CCA believes the proposed NFP regulator should be established as a new national organisation with a specially recruited management team involving senior expertise from both government and the NFP sector – at least 30% of staff from government with expertise in NFP regulation or government regulatory reform, and at least 30% of staff with senior NFP experience.

The new NFP regulator would ideally have a direct report to a senior Minister within government, preferably in a central agency. Under present arrangements, this might well be the Assistant Treasurer. It is important that the new regulatory agency has its own identity and own direct report to ensure the culture it develops is one suited to the core tasks of driving reform while supporting NFPs and promoting government and community use of the information it collects. Given that most NFPs lack capacity, the new regulator would not require NFPs to pay for registration and reporting, or adopt a cost recovery approach.

It is also fundamentally important that the NFP regulator is obliged to provide an annual public report detailing the work and achievements of the NFP regulator against an agreed work plan with measurable goals. Without external momentum for change, it can be very difficult to drive change within government.

Ideally the NFP regulator will work with key national bodies that are engaged with the NFP sector including academics, Centres of Excellence, peak bodies and others to ensure there are ongoing efforts to review the practices of the NFP regulator. Only with ongoing input from the NFP sector can a national regulator continue to achieve more effective reporting and accountability arrangements for all NFPs.

1. **Implementation - where to from here?**

Throughout this submission the emphasis has been on outlining the ideal model for a new NFP regulator. As noted earlier, establishing an ideal model provides a direction for planning and implementing actions now and into the future.

CCA believes an effective national NFP regulator, as outlined in this submission, can be fully operational and achieving real measurable outcomes for NFPs, the government and the broader community, within a five year time frame.

Implementation needs to begin immediately. The following three tasks should be priority actions over the coming six months:

1. The first task is to agree the model of NFP regulator that will be in place in five years. This will involve further analysis and discussion with the NFP sector and within government, but there is no reason why this task cannot be completed within a relatively short timeframe.
2. The second task involves developing a five year implementation strategy. Again, given there is agreement about the ideal model, the development of an implementation strategy should be a relatively achievable task.
3. The third task is to set up the organisation, including recruiting staff and establishing the necessary organisational capacity. This task will require a significant investment from government if the NFP regulator is going to have the capacity to drive reform into the future.

The CCA is not in a position to suggest immediate priority actions beyond the three outlined above; however, like many others in the NFP sector, CCA is keen to see the government maintain the momentum for NFP reform that has been generated in the last six months.

**Conclusion**

As noted in the introduction, CCA has not sought to answer each question in the scoping study, but to outline what CCA members see as the ideal model for a national NFP regulator. Nor has this submission described in any detail the kind of imposts and anomalies that are so frustrating for NFPs seeking to comply with all the required regulations. It has highlighted the reports and recommendations that indicate that anyone taking the time to review current practices can clearly identify the need for reform in the way governments relate to NFPs.

Government can and should deliver the reform so many have been calling for over the last decade. Achieving real reform will take time and investment, but within five years the kind of regulatory body outlined in this submission will provide significant benefits for government, not-for-profits and the broader community.

The not-for-profit sector is too large and too important not to be brought into the 21st century through abolition of 19th century regulation and retrograde engagement from over-zealous officials.

Government investment to free up the role of NFPs will generate ongoing returns to all Australians through stronger communities, increased economic growth and resilience, increased engagement and belonging. What reform could be more important?

**Attachment 1**

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**List of Members – The Community Council for Australia**

**1 January 2011**

1. Aboriginal Employment Strategy Ltd. – Danny Lester
2. Associations Forum Pty. Ltd. – John Peacock
3. Australian Indigenous Leadership Centre – Rachelle Towart
4. Australian Institute of Superannuation Trustees – Fiona Reynolds
5. Connecting Up Australia – Doug Jacquier
6. Good Beginnings Australia – Jayne Meyer Tucker
7. HammondCare – Stephen Judd (Director)
8. Illawara Retirement Trust – Nieves Murray
9. Lifeline Australia – Dr Maggie Jamieson
10. Maroba Lodge Ltd. – Viv Allanson
11. Mental Health Council of Australia – Melanie Cantwell Acting CEO
12. Mission Australia – Toby Hall (Director)
13. Musica Viva Australia – Mary Jo Capps
14. Opportunity International Australia – Rob Dunn
15. Philanthropy Australia – Deborah Seifert
16. RSPCA Australia – Heather Neil
17. Social Ventures Australia – Michael Traill
18. Surf Life Saving Australia – Brett Williamson
19. The ANZCA Foundation – Ian Higgins
20. The Benevolent Society – Richard Spencer
21. The Big Issue – Steven Persson
22. The Smith Family – Paul Henderson, Acting CEO
23. The Centre for Social Impact – Peter Shergold
24. Volunteering Australia Inc. – Cary Pedicini
25. Wesley Mission – Keith Garner
26. WorkVentures Ltd. – Arsenio Alegre
27. World Vision Australia – Tim Costello (Chair)
28. YMCA Australia – Katherine Pengilly