

IMPROVING COMMUNITY SECTOR EFFECTIVENESS AND EFFICIENCY: PRIORITIES FOR REDUCING RED TAPE



Overview

As successive governments have committed to reducing the regulatory burden on business, so too they need to give equal priority to working with the community sector on reforms that will enhance the efficiency and effectiveness of the sector's operating environment. The Productivity Commission clearly showed the most significant areas of 'red tape' in the community sector relate to contract administration.¹ Reform is urgently needed to redress this burden, in the interests of supporting effective, efficient community services.

The PC study sets out numerous measures that could be undertaken by governments at state, territory and Commonwealth levels to reduce the burden of overly onerous red tape. These recommendations have been largely endorsed by the community sector and their implementation would be widely welcomed. Importantly, reducing the red tape of government administration doesn't automatically relieve the burden of onerous reporting and regulation on community services. Reforms must be driven by the *objective of improving the capacity, efficiency and effectiveness of community services*.

This briefing sets out ACOSS priorities for improving the viability and effectiveness of community services by reducing the overly onerous and unnecessary burden of red tape. We recommend:

- Reducing red tape through supporting the establishment of a national regulator for the charitable and not-for-profit sectors;
- Improving the framework of contracting for services;
- Reducing the costs of compliance by targeting excessive compliance monitoring and standardising data criteria and collection; and
- Improving measurement and evaluation and supporting innovation in the sector.

In any government-led reforms impacting upon the community sector, there must be clarity about regulatory requirements *in advance of* taxation reforms. Leadership is also a key determiner of the success or otherwise of such reforms, at both Ministerial in Cabinet and central agency levels.

The community sector's experience and expertise adds significant value to Australia's economic and social development, not just through the delivery of services, but at all stages of policy development, planning and implementation. Governments in many jurisdictions can fail to recognise this value or contribution, as evidenced by the frequent side-lining of community organisations from processes directed at Australia's economic and social development. A properly funded and resourced community sector, unburdened by unnecessary red tape, would maximise its impact in providing significant social and economic value, from the design of policy to the delivery of effective and efficient programs and services.

¹ PC (2010) 'Study into the Contribution of the Not-for-profit sector', *Productivity Commission*, <http://www.pc.gov.au/projects/study/not-for-profit/report>

1. Reducing red tape

i. Establish a national regulator for the charitable and not-for-profit sectors.

ACOSS has long-supported this reform as a key step towards reducing unnecessary levels of red tape, particularly in relation to the currently overly onerous levels of reporting required by community services.

The current Government's commitment to the Australian Charities and Not-for-profits Commission will see the implementation of this important reform. However its necessarily incremental implementation requires bipartisan support to ensure an effective and continued rollout. The early stages of reporting to the ACNC will require significant further attention, particularly through relationships with state and territory regulators, to reduce the duplicated reporting functions currently faced by the sector. We support this approach as a necessary phasing in but note that its success will require strong leadership from successive Commonwealth Governments, including through negotiating with states and territories. Additionally, while the initial phase of the ACNC is likely to affect most community services through its targeting of registered charities, subsequent phases should address the role and interaction of other not-for-profit organisations. We strongly encourage bipartisan support for the establishment and implementation of the national regulator for charities and not-for-profits.

ii. Improve the framework of contracting for services

Contracting is one of the key relationships between community services and Government, through government funding of community organisations to provide social services. Yet the capacity of community organisations to provide these services is routinely undermined by poor contracting processes.

- Negotiation processes are almost non-existent and rarely adequate where they do take place.
- There is no clear policy framework for determining the cost and funding levels of government-funded community services.
- Repeat funding rarely keeps up with cost rises and indexation is inconsistent and inadequate.

Poor contracting processes are resulting in a considerable shifting of risk from government funders to community sector providers, with inadequate protection – both financial and non-financial – for services and their clients. These poor practices are also severely undermining the efficiency and effectiveness of services, felt most recently (although not exclusively) in the national equal pay case for community workers before Fair Work Australia.

We strongly support the need for transparency and accountability when Government funds community services and welfare agencies to deliver services. Indeed, transparency and accountability are core values for community organisations, irrespective of Government involvement. However the capacity and effectiveness of community services is consistently undermined by poor contracting processes. A common example is the introduction of competitive tendering and onerous reporting requirements, often at the expense of useful performance measures, with the stated intention of ensuring or improving transparency and accountability. There is considerable concern that government service delivery contracts

significantly shift the risk to community services and welfare organisations without adequate compensation. Meanwhile, competition between agencies for government contracts has reduced collaboration and sharing of best practice.

The work of ACOSS member organisations is rarely limited to single Government agencies. As such our members see the whole picture, from legitimate Government requirements and the layers of additional red tape that are unnecessary and duplicative. Much of the processes around contracting are overly burdensome yet fail to set sensible outcome measures or assist in performance evaluation and improvement. Regulation tends to focus on control over the process, often at the expense of ensuring that good outcomes are achieved. See Appendix 1 for further detail on our concerns about government contracting.

While governments rely heavily on non-government organisations including not for profits in the provision of community services, their contribution does not appear to be valued during consultation and tendering processes. Contracting processes should strive for:

- Recognition of demonstrated performance in the existing system or elsewhere, not a heavy reliance on quality of submissions alone;
- Balance between the Government and providers in contracting processes;
- Minimal time requirements on community services;
- Minimal disruption to clients that might ensue, either through the contracting process itself or in the transfer of records or relationships from established services to new agencies; and
- Valuing service and community connections as part of any new or re-contracting process.

2. Reducing the costs of compliance

i. Excessive compliance monitoring

Most government contracts specify significant reporting requirements including data collection, performance reports, financial reporting, service standards and audits. However there is growing evidence that this has become overly burdensome and diverts scarce resources away from core business. Poorly framed or overly stringent service standards or requirements become unnecessary cost drivers that distract the service providers' resources and focus from the areas of most importance to the achievement of agencies' overall objectives. As one ACOSS member put it during a consultation, 'contract reporting requirements generate a lot of heat without shedding much light'.

ii. Failure to standardise data criteria and collection processes

The definitions used for data collection and reporting on programs are inconsistent and waste valuable resources and time. Possible remedies include reducing the number of times NFPs are required to report information and ensuring that data requirements are consistent with a common, appropriate reporting framework. The Australian Charities and Not-for-profits Commission intends to undertake this work once it has established its own reporting framework. However this reform will require strong leadership from the Commonwealth government and bi-partisan support including at the state and territory levels, if it is to improve efficiency and effectiveness for community services.

ACOSS supports the following recommendations of the Productivity Commission as measures towards address the problems outlined in this discussion.

PC Recommendation 5.2: Australian governments should adopt a common framework for measuring the contribution of the not-for-profit sector. Having regard to the diversity of the sector's activities and structures, measurement using this framework should embody the principles of proportionality, transparency, robustness, flexibility, and relevance.

PC Recommendation 5.3: To minimise compliance costs and maximise the value of data collected, Australian governments should agree to implement a reform agenda for reporting and evaluation requirements for organisations involved in the delivery of government funded services. This should:

- commit to basing reporting and evaluation requirements in service delivery contracts on a common measurement framework (appropriately adapted to the specific circumstances of service delivery)
- require expenditure (input) measures to be based on the Standard Chart of Accounts
- develop data standards for the relevant non-expenditure items
- ensure that information generated through performance evaluations are returned to service providers to enable appropriate learning to take place and allow organisations to benchmark their performance
- employ, where practicable, the principle of 'report once, use often'².

iii. Consistent client data collection

Organisations are required to report on the same activities in different ways to different funding bodies. Research has shown that client data requirements were 'exactly the same' across funding bodies for only 10% of multiple-funded agencies. There are ongoing complaints about different data definitions used by different agencies, even if they are in the same department or same jurisdiction and supporting similar programs. Government agencies do not adopt National Community Service Data standards which they have established and which community service and welfare organisations have contributed to. There are different definitions used between Australian Bureau of Statistics and the Australian Institute of Health and Welfare, let alone between Departments when collecting information. For example, while the Departments of Health and Ageing and of Families and Housing, Community Services and Indigenous Affairs may be funding similar programs and organisations, their reporting requirements are significantly different. While the national regulator (ACNC) will address some of these, there is further important work to be done in developing consistent criteria and methods of collection for data on clients and services.

We recommend that the Australian Institute of Health and Welfare be commissioned to review the National Classification of Community Services, to review current limitations and identify means of improving its usefulness for both government and non-government users.

² PC (2010) 'Study into the Contribution of the Not-for-profit sector', Productivity Commission, <http://www.pc.gov.au/projects/study/not-for-profit/report>

3. Improving the measurement and evaluation of community services

One of the reasons the Productivity Commission's 2010 study was such a landmark report was because it was a rare attempt to analyse the wide range of activities of community services and not-for-profits across Australia. To carry out its aims the community services and welfare sector needs to be properly understood and supported. Despite the enormous weight of reporting and data generated by community organisations, we know very little about the community sector, its size, financial values, employment figures or volunteer workforce. Perhaps most significantly, we do not have standard approaches to measuring social impact. As our members frequently note, it is easier to count the numbers of people assisted rather than measure the change required for a movement in from point a to point b. This also stems from a failure to understand the multiplicity of problems facing many clients and that a holistic approach and structural changes are often required. We need to focus on measuring outcomes and impact rather than throughputs and outputs and to understand the complexity and longevity of what needs to be done.

In order to do this, the sector needs investment to develop more sophisticated frameworks and program evaluation tools which could then be adopted consistently by governments. This work should leverage the considerable attention already paid to this issue by many in the community sector, and seek to establish ways that the impact of the community sector can be measured and evaluated consistently across the country.

4. Innovation

There is a long history of the community sector engaging in innovation, through practice of services, through processes of supporting and engaging communities, and through raising awareness of key social issues. However the sector's capacity to engage productively and comprehensively in innovative practices has been severely hampered by the inability of funding bodies to recognise this as a useful endeavour and a worthy direction of funding. We reiterate our recommendation that at least 1% of program delivery costs should be devoted to innovative approaches delivered in partnership with government, the community services and welfare sector, research bodies and philanthropy.³ Outcomes could be set in consultation with partners but there would be considerable flexibility around how to get there. Innovation funds must factor in a percentage of failure – the price we expect to pay in science, health and business to get leaps of innovation which may ultimately pay off many times over.

Some innovative projects would be run over a three to five year time frame, rather than one or two years. An innovation fund or pool would have clear objectives and outcomes but would enable considerable flexibility around how these were achieved. It would need to factor in a percentage for failure, the price we expect to pay in science, health and business to get leaps of innovation which may ultimately pay off many times over. There is also a need to consider low interest loans or no interest loans for capital infrastructure for community service and welfare organisations.

³ ACOSS (2009) 'Submission to the PC study into the contribution of the not-for-profit sector', http://acoss.org.au/images/uploads/ACOSS_submission_-_PC_Study_into_the_Contribution_of_the_Not_for_Profit_Sector.pdf

Appendix 1: Other specific concerns and recommendations around Government Contracting⁴

Delay in government payments to community services and welfare organisations

While many contracts place stringent obligations on community organisations in terms of performance and provide for termination if contractual obligations are not met, governments are often slow to pay contracted community organisations. Contracts do not generally provide for compensation or interest payments where government departments have been slow to pay. There is also evidence of stop start funding or major delays in funding from Federal DOHA around mental health in NT and AIDS peak bodies which disrupt services for clients and potentially lose valuable staff expertise.

Recommendation: Insert clause in contracts to provide for compensation/interest payments where payment to community organisations are delayed.

Failure to cover the cost of reporting requirements and changes to them

The costs of audits are not funded in many programs – for example HACC and the Family Relationships Services Programs. There is also a lack of consistency across Government departments, even when in the same jurisdiction. For example one of our national members noted that the Federal Department of Health and Ageing (DOHA) is provided funding to cover the cost of adapting their IT systems to new reporting requirements but FaHCSIA, who are in the process of reviewing their reporting requirements, are not proposing to offer any additional funds to cover the costs of the IT changes which will ensue.

Responding to changes in the external environment

If an agency has to meet additional costs that could not have been expected at the time of contract negotiations or were not allowed by the government, the contract should state how the government will respond. In such situations there should be sharing of responsibility. This happened for example, with the increase in the SACS Award in NSW, where the additional cost of providing services was not shared by the Federal government, where there were Commonwealth funding organisations in NSW with employees paid under the SACS Award.

Recommendation: While it is acknowledged that this is a complex issue, it would be possible to outline in principle support for the idea that where there are changes in the external environment, then the Federal Government will share responsibility for responding to the situation, with the details of the response determined on a case by case basis.

Termination of contracts

There are concerns that some contracts allow government too much flexibility to terminate contracts and conversely provide inadequate security for contractors, preventing agencies from responsible planning, managing cash flow and paying/retaining employees. For example, ACOSS understands that some contracts permit government departments to terminate contracts at their convenience without providing reasons, access to alternative dispute resolution processes

⁴ This Appendix is taken from ACOSS (2009), *Submission to the Productivity Commission Study of the Contribution of the NFP sector*, http://acoss.org.au/images/uploads/ACOSS_submission_-_PC_Study_into_the_Contribution_of_the_Not_for_Profit_Sector.pdf.

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or compensation for the contracted organisation.

Recommendation: Insert contract clauses requiring that contracted agencies be given reasons for termination of contract and access to alternative dispute resolution mechanisms to resolve, wherever possible, contractual disputes.

Recommendation: Insert clause requiring that agencies are entitled to compensation for contract termination where there has been no significant breach of terms by the contracted organisation. This compensation should cover the additional costs borne by the agency as a result of the termination.

Recommendation: Ensure that all contracts provide at least a 90 day notification period before termination of a contract (except where there has been a major breach of contractual terms by the contracted organisation).

Appendix 2: Productivity Commission recommendations relation to government contracting of community services

Improving the effectiveness of direct government funding

Providing clarity over funding obligations

Recommendation 11.1: Australian governments should, in the contracting of services or other funding of external organisations, determine and transparently articulate whether they are fully funding particular services or activities undertaken by not-for-profit organisations, or only making a contribution towards the associated costs and the extent of that contribution.

Australian governments should fully fund those services that they would otherwise provide directly (allowing for co-contributions from clients and any agreed contributions by service providers). In applying this criterion, governments should have regard to whether the funded activity is considered essential, as part of the social safety net or an entitlement for eligible Australians.

Rec 11.2: Australian governments should ensure that service agreements and contracts include provision for reasonable compensation for providers for the costs imposed by changes in government policy that affect the delivery of the contracted service, for example, changes to eligibility rules, the scope of the service being provided, or reporting requirements.

Rec 8.1: The Departments of the Treasury and Finance and Deregulation should jointly conduct a review into the feasibility, the costs and the benefits of requiring value for money assessments for government procurement to consider significant input tax concessions. Such a review should be wide-ranging, including the not-for-profit and for-profit sectors.

Ensuring appropriate independence

Rec 11.3: Australian governments funding service provision or making grants should respect the independence of funded organisations and not impose conditions associated with the general operations of the funded organisation, beyond those essential to ensure the delivery of agreed funding outcomes.

Removing impediments to better value government funded services

Getting the model right

Rec 12.1: Australian governments should ensure that they choose the model of engagement with not-for-profits that best suits the characteristics and circumstances of the service being delivered. In choosing between alternative models of engagement, governments should consider the nature of the outcomes sought, the characteristics of clients, and the nature of the market. In particular:

- there should be no presumption that purchase of service contracting will always be the most appropriate model
- where governments are seeking the delivery of a clearly defined outcome and markets are genuinely contestable purchase of service contracting should remain the preferred approach
- where truly competitive markets develop and clients face real choice in the services available to them, governments should consider moving to client-directed service delivery

models. This transition should be conditional upon there being appropriate safeguards in place to protect and empower vulnerable clients (or their carers) in exercising choice and ensure an acceptable minimum level of service quality and provision.

Rec 12.2: Where a market-based approach is not feasible or appropriate, governments should use other models of engagement. This may involve governments entering into either extended life or short-term joint ventures. Extended life joint ventures should adopt an iterative process that will:

- involve all parties in the design of the program
- embed and fund an agreed evaluation process, informing program design and modification
- regularly review and revise the service delivery approaches in light of findings from evaluation, changing demands or environmental conditions
- provide long-term or rolling funding with capacity to adjust funding in light of the modifications.

Rec 12.3: Australian governments should ensure that whatever model of engagement is used to underpin the delivery of services it is consistent with the overarching principle of obtaining the best value for money for the community. In determining value for money, governments should explicitly recognise any indirect or wider benefits that providers may be able to generate. An evidence based approach should be used to assess the nature, extent and relevance of these types of benefits on a case-by-case basis.

Rec 12.4: Australian governments should assess the relative merits of the lead agency model on a case-by-case basis. This should include an assessment of the costs to not-for-profits of adopting this approach including any duplication of reporting and accountability requirements, the additional transaction costs associated with sub-contracting, and the potential for loss of diversity among providers.

Improving procurement and management processes

Rec 12.5: The length of service agreements and contracts should reflect the length of the period required to achieve agreed outcomes rather than having arbitrary or standard contract periods.

Extended life service agreements or contracts should set out clearly established:

- processes for periodically reviewing progress towards achieving a program's objectives
- conditions under which a service may be opened up to new service providers or a provider's involvement is scaled back or terminated.

Rec 12.6: When entering into service agreements and contracts for the delivery of services, government agencies should develop an explicit risk management framework in consultation with providers and through the use of appropriately trained staff. This should include:

- allocating risk to the party best able to bear the risk
- establishing agreed protocols for managing risk over the life of the contract.

Rec 12.7: Australian governments should urgently review and streamline their tendering, contracting, reporting and acquittal requirements in the provision of services to reduce compliance costs. This should seek to ensure that the compliance burden associated with these

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requirements is proportionate to the funding provided and risk involved. Further, to reduce the current need to verify the provider's corporate or financial health on multiple occasions, even within the same agency, reviews should include consideration of:

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

Rec 12.8: The Department of Finance and Deregulation should develop a common set of core principles to underpin all government service agreements and contracts in the human services area. This should be done in consultation with relevant government departments and agencies and service providers.

Appendix 3: Data classification methodologies, Australian Community Sector Survey 2011⁵

Currently there is no national data standard for collecting information about not-for-profit (NFP) organisations, with different classificatory schemes used by different national and international research bodies. Classification schemes commonly used in Australia include the Australian Institute of Health and Welfare's (AIHW) National Classification of Community Services (NCCS); the ABS classification systems; the Australia and New Zealand Standard Industry Classification (ANZSIC) community services definition; and the International Classification of Non-Profit Organisations (ICNPO) scheme.

The ABS classifies community services as: residential aged-care services; child-care services; and other social assistance services, including employment and disability services and policy and advocacy work. By contrast the ICNPO classifies not-for-profit social services according to the following categories: child welfare, child services and day care; youth services and youth welfare; family and relationship services; disability services; services for the elderly; self-help and other personal social services; emergency relief and disaster control; temporary shelters; refugee assistance; income support and maintenance; and material assistance (PC 2010, 65). In addition, the ICNPO defines not-for-profit health services as: hospitals and rehabilitation; nursing homes; mental health and crisis intervention; and other health services such as public health education (PC 2010, 65). Finally, the NCCS classifies community services as: personal and social support; support for children, families and carers; training, vocational rehabilitation and employment; financial and material assistance; residential care and supported accommodation; corrective services; service and community development and support; and other community service activities. Each category of service within the NCCS includes numerous subcategories that further define areas of specific service provision.

Each of these schemes differs in the way it classifies non-profit community services and has certain limitations in terms of collecting accurate and comprehensive data about a sector as diverse as the Australian community services sector. For example, data coded using the ANZSIC classification does not allow the subsectors of the community services sector to be identified. Similarly, the ICNPO does not reflect the way community services are structured and defined domestically. A clear example of this is the definition of refugee services. The ICNPO defines refugee services and those provided to internally displaced people and inhabitants of UN refugee camps; whereas in Australia refugee services typically comprise settlement and other support services provided to people who have been recognised as refugees and resettled in Australia.

There are inherent difficulties in establishing a definitive classificatory scheme which identifies organisations according to service type. In addition, many organisations are typically a composite of services and supports. The typology adopted in ACSS was more exhaustive than the classification systems outlined above, particularly the ABS and AIHW schema, which did not enable the capture of data specific to particular areas, such as employment, housing, health, aged care and child care services. Grouping organisations according to their principal activity – which was done throughout the data analysis below – circumvents this to some extent, but

⁵ ACOSS (2011) *Australian Community Sector Survey*, p. 4,
http://acoss.org.au/images/uploads/ACSS_2011_Report_Volume_1_National.pdf

nevertheless is a compromise. Even then, some survey respondents found identifying a primary area of service provision difficult, despite the expanded classification scheme adopted by the ACSS.

The following list sets out the classification scheme employed by ACOSS in the ACSS 2011.

- Employment/training services
- Disability services
- Housing/homelessness services
- Child welfare, child services and day care
- Domestic violence and sexual assault
- Family and relationship services
- Emergency relief services for those experiencing financial crisis (eg. Provision of food, clothing, transport, utilities vouchers)
- Financial support services (eg financial counselling, financial literacy education, NILS[®], money management services and problem gambling)
- Mental health
- Other health services
- Information, advice and referral services
- Legal services and advocacy
- Migrant, refugee and asylum seeker services
- Indigenous support services
- Residential aged care and nursing homes
- Services for the aged and elderly (excluding residential facilities)