

Chapter 4

Meeting the Needs of the Third Sector

4.1 This Chapter examines the position of Australia's Third Sector in relation to the Government and Business Sectors.

4.2 Chapter 2 highlighted the lack of available information about the Sector, despite estimates clearly placing the Third Sector as an important social and economic force. Despite this, there has been no major attempt by governments to define the Sector – which organisations are included and which are not; harmonising legislation across states and territories to reduce confusion and costs for the Sector; and measuring the contribution made by the entire Sector (not just incorporated organisations or companies limited by guarantee).

4.3 The committee notes that there has been no concerted attempt to implement most of the recommendations made by any of the numerous reviews of Not-For-Profit Organisations undertaken in the previous thirteen years or so. Reforms to date have been piecemeal and have had a narrow focus.

4.4 For example, the *Extension of Charitable Purpose Act 2004* provides a statutory extension to the common law meaning of 'charity' for the purposes of all Commonwealth legislation.¹ The bill was proposed following one of the 27 recommendations made in the 2001 Definition of Charities Inquiry. No attempt was made in this bill to create a statutory definition for 'charity', which would have aligned over 100 pieces of legislation referring to charities.

4.5 State governments have tried to enact legislation to assist the Sector. In October 2006 following royal assent, the Victoria Government enacted the *Charities Amendment Act 2006* which gives trustees of Victorian trusts the legal power to make grants to those entities which are deductible gift recipients, but which are not considered charities in law only because of their link to government. Philanthropy Australia warns its members that they:

...must also ensure compliance with Commonwealth tax law. The Act does not affect the definition of a charity or confirm that government-linked DGRs are charitable at law, because it has no power to do so.²

4.6 Currently, it is Not-For-Profit Organisations such as Philanthropy Australia and other peak bodies which are forced, at their own expense, to monitor legislation relating to the Third Sector and inform their members in the absence of a government or independent body to do so.

1 Extension of Charitable Purpose Bill 2004, *Explanatory Memorandum*, p. 1.

2 Philanthropy Australia, *Legislation Monitor*, <http://www.philanthropy.org.au/representation/legislation.html> (accessed 7 November 2008).

4.7 The committee considers that it is vital to have a strong Third Sector operating within Australia. Reforms are necessary to ensure that this happens. According to Mr David Thompson, Chair of the National Roundtable of Nonprofit Organisations, the object of reform should be:

To promote nonprofit organisations in their activities that lead to important social and economic outcomes, including increasing employment, engagement of Australian citizens in volunteering, capacity building of communities and organisations, enhanced efficiency and effectiveness in delivery of services, and enhanced integrity and donor and general public confidence.³

4.8 The committee believes that the first step towards the necessary reforms is ensuring that a body is created for pursuing the objectives of reform.

UK – Office of the Third Sector

4.9 According to Gordon Brown, Prime Minister of Great Britain:

I believe that a successful modern democracy needs at its heart a thriving and diverse third sector...[W]e must create the space and opportunity for it to flourish, we must be good partners when we work together and we must listen and respond.⁴

4.10 In 2006, in recognition of the important role of the Third Sector in both social and economic terms, the UK Government established the Office of the Third Sector (OTS) within the Cabinet Office and assigned a Minister to be responsible for the Sector. The OTS leads work:

across government to support the environment for a thriving third sector (voluntary and community groups, social enterprises, charities, cooperatives and mutuals), enabling the sector to campaign for change, deliver public services, promote social enterprise and strengthen communities.⁵

4.11 It does this through its role of overseeing the *Charities Act 2006*, alongside the independent Charities Commission.⁶ One of the first tasks of the OTS was to undertake a review of the Third Sector to establish a long term vision and promote a

3 Mr David Thompson, Chair, National Roundtable of Nonprofit Organisations, *Proof Committee Hansard*, 29 October 2008, p. 35.

4 Mr Gordon Brown, *The future role of the third sector in social and economic regeneration: final report* (Foreward by the Prime Minister – the Third Sector at the Heart of Society), July 2004, http://www.cabinetoffice.gov.uk/~-/media/assets/www.cabinetoffice.gov.uk/third_sector/the_future_role_of_the_third_sector_in_economic_and_social_regeneration%20pdf.ashx (accessed 7 November 2008).

5 Office of the Third Sector, *About Us*, http://www.cabinetoffice.gov.uk/third_sector/about_us.aspx (accessed 7 November 2008).

6 The UK Charities Commission is discussed in further detail in Chapter 6.

partnership between the Government and the Third Sector. Specifically, the OTS is responsible for:

- the reform of charity law, including the *Charities Act 2006*;
- monitoring new legislation and changes to existing legislation to ensure that charities are not disadvantaged in any way;
- laws governing public charitable collections;
- driving forward the Government's support of the development of a confident and independent sector through funding, finance and support;
- providing support to community based activity;
- driving cross-government action to improve partnership working and ensure better terms of engagement between central and local government and the third sector;
- supporting voluntary activity where all individuals and communities are enabled to play a full part in civil society;
- fostering a culture of planned regular and tax effective giving;
- working across government to create an environment in the UK for social enterprises to thrive;
- reduce the barriers to the third sector's involvement in designing, delivering and improving public services;
- providing government led and sponsored research into volunteering, charitable giving, citizenship and social enterprise; and
- consulting with stakeholders.⁷

4.12 This assistance from the Government has resulted in more efficient regulation, political engagement and financial support for the Sector. Ms Katherine Keating, an advocate for charities in Australia, believes that 'Australia can learn many lessons from the United Kingdom's example'. She goes on to recommend that Australia follow the UK example by creating a Federal Minister and a Department for the Sector:

Put simply, when the non-profit sector has a turnover of more than \$33.5 billion, why don't we have a Minister responsible for it? As the non-profit sector in Australia continues to grow, the demand for a governmental leader is evident. With a champion for collaboration between the non-profit sector and the government in place, all of Australia would benefit from the industry's growth and development.⁸

7 Office of the Third Sector, *Various pages*, http://www.cabinetoffice.gov.uk/third_sector.aspx (accessed 7 November 2008).

8 Keating, Katherine, *The National Governance of the Non-Profit Sector*, 2007, p. 25.

Social Inclusion

4.13 The committee notes that the Government has made progress in giving a voice to the Third Sector. Following the 2007 election, The Hon Julia Gillard MP was named the Minister for Social Inclusion and Senator the Hon Ursula Stephens was named Parliamentary Secretary for Social Inclusion and the Voluntary Sector. In May 2008, a newly-established Social Inclusion Board met for the first time, with secretariat support provided by the Department of Prime Minister and Cabinet. The terms of reference of the Social Inclusion Board are very broad:

- (a) Provide advice and information to the Minister for Social Inclusion on how to improve social inclusion across the country.
- (b) Consult widely and provide views and input on various aspects of social inclusion including how to measure disadvantage and social exclusion, how to increase economic and social participation, and how communities can be engaged with social inclusion matters.
- (c) Report annually on progress on social inclusion to the Minister for Social Inclusion.
- (d) Provide advice on specific matters referred to it by the Minister for Social Inclusion.⁹

4.14 The Government's social inclusion policies are currently being progressed through a number of Departments, including Prime Minister and Cabinet (PM & C), Treasury, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), and the Department of Education, Employment and Workplace Relations (DEEWR).

4.15 In addition to establishing the Board, the Australian Government announced work on a National Compact, to be led by FaHCSIA, which is:

...an agreement between the Australian Government and the not-for-profit sector outlining how the two will work together to improve and strengthen their relationship, now and into the future.

A National Compact could also provide a platform for discussion and agreement between the Australian Government and the sector about how to achieve objectives that will benefit the community.¹⁰

4.16 Currently, both the UK and Canada have National Compacts in place with the Third Sector. The UK Compact consists of an Agreement and five Codes of Practice, relating to Volunteering, Funding and Procurement, Consultation and Policy Appraisal, Community Groups, and Black and Minority Ethnic Groups. The Codes of

9 Social Inclusion, *The Australian Social Inclusion Board*, http://www.socialinclusion.gov.au/aus_inclusion_board/ (accessed 7 November 2008).

10 Australian Government, Social Inclusion, *A National Compact*, http://www.socialinclusion.gov.au/A_National_Compact.htm (accessed 10 November 2008).

Practice sets out shared principles and commitments between the government and the sector, and establishes guidelines about how the two groups should work together.¹¹

4.17 The committee heard positive feedback during its Inquiry about the development of a National Compact, and some indicated that a compact would be an appropriate vehicle through which reforms to the Sector could be guided:

As to what a charities commission would look like, we believe that this should be the subject of an ongoing dialogue. I mentioned earlier that the proposed national compact could be an ideal vehicle for that dialogue to occur to arrive at a charities commission, if that be the path we decide to go down as a nation.¹²

4.18 A round of consultations has so far been undertaken within the Sector, and the second and final round of consultations is expected to take place early in 2009. Ms Kim Peake of PM & C updated the committee on the first round of consultations on the Compact:

...the first stage of consultations is now finalised. Those consultations were managed by ACOSS, the Australian Council of Social Service, and public forums were held in each state and territory capital city as well as Alice Springs and Townsville. Additional forums were also held to seek the views of people with an intellectual disability and people from culturally and linguistically diverse backgrounds and organisations working with people who experience homelessness. The purpose of that first stage was to gauge whether there was support for the development of a compact before committing either the government or the sector to a more resource intensive process to develop a compact.¹³

4.19 The committee, found, however, that there was a suggestion that the consultation process was not ideal:

[T]he discussion on the compact has also been fairly truncated. It has been led by ACOSS, which is clearly an organisation working at the community level, but ACOSS does not represent the complexities of the sector.¹⁴

Committee View

4.20 The Committee understands the frustration of the Third Sector in Australia that may be attributed to a lack of action by previous governments in implementing

11 Compact, *About Us*, http://www.thecomcompact.org.uk/information/100018/about_us/, (accessed 10 November 2008).

12 Dr John Falzon, Chief Executive Officer, St Vincent de Paul Society National Council of Australia, *Proof Committee Hansard*, 28 October 2008, p. 21.

13 Ms Kim Peake, Executive Coordinator (Productivity), Department of Prime Minister and Cabinet, *Proof Committee Hansard*, 29 October 2008, p. 15.

14 Dr Sue-Anne Wallace, Chief Executive Officer, Fundraising Institute Australia, *Proof Committee Hansard*, 31 October 2008, p. 5.

recommendations from a number of reviews. The committee notes, however, that the current Commonwealth Government has moved to address the neglect of the Sector through its social inclusion policies such as the development of a National Compact and through the appointment of a Minister and Parliamentary Secretary for Social Inclusion.

4.21 The committee notes the establishment of the OTS in the UK and the positioning of this department within the Cabinet Office. It believes that the creation of a unit specifically for the Sector is necessary in Australia. The committee sees the benefits to be gained for both the sector and government through the development of such a unit within PM & C which will manage the challenges facing Not-For-Profit Organisations. The committee believes that the strength of the Sector in Australia also warrants the appointment of a Minister who would have responsibility for the Sector.

Recommendation 2

4.22 The committee recommends that the Government establish a unit within the Department of Prime Minister and Cabinet specifically to manage issues arising for Not-For-Profit Organisations. The unit should report to a Minister for the Third Sector.