



29 August 2008

Committee Secretary  
Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

### **Inquiry into the Disclosure regimes for charities and not-for-profit organisations**

ACL is a leader in the development and provision of educational services and learning solutions. It is a wholly owned subsidiary of Navitas Ltd, an ASX listed company and is Australia's largest private sector provider of English language training.

ACL delivers a number of Commonwealth funded training and settlement programs where contracts are awarded following a competitive tender process where value for money, including price is a major factor. A number of charities and not-for-profit organisations are also significant providers in this space.

ACL's submission is limited to the disclosure regime and public policy issues applying to commercial activities undertaken by charities and not-for-profit organisations.

To determine the pricing advantages enjoyed by charitable organisations in competitive tenders, ACL commissioned Deloitte to review the procedural fairness considerations for upcoming tenders for Commonwealth funded training and settlement programs. A copy of their report is attached and forms part of this submission.

The main issue for ACL is that the significant cost advantages enjoyed by charitable institutions through public subsidisation of commercial operations via tax and other exemptions, place non-charitable institutions at an equivalent disadvantage in submitting a price-competitive bid. Currently, in competing for Government tenders, charitable providers are not required to adhere to the principles of competitive neutrality that bind government agencies and other public institutions that rely on a mix of public and private funding (e.g. Universities or State or Commonwealth owned agencies).

The potential cost advantages are very material and estimated by Deloitte at between 10.4% and 14.2% which amounts to several million dollars when applied to national training programs.

ACL has no issue with charitable organisations pursuing commercial activity to fund benevolent activities, and indeed partners with a charitable organisation as part of its current delivery of some programs. However, it is ACL's contention that public sector tenders should incorporate provisions which aim to create competitive neutrality between private, public sector and charitable providers competing for public service contracts, in line with clear best practice standards of public policy and procedural fairness.

### **Disclosure regimes**

ACL recommends that the commercial activities of charities and not-for-profit organisations be separated (through either legal or accounting mechanisms) and be subject to appropriate and fully transparent disclosure regimes. The commercial activity should be accounted for on the basis of 'full cost attribution' with appropriate adjustments/disclosures for services that are received pro-bono or delivered through the use of

**ACL Pty Ltd**  
ABN 51 003 916 701

Level 4  
11 York Street  
Sydney NSW 2000  
Australia

PO Box N556  
Grosvenor Place  
Sydney NSW 1220  
Australia

CRICOS Provider No. 00031D

T 61 2 9252 3788  
F 61 2 9252 3799  
E [enquiry@acl.edu.au](mailto:enquiry@acl.edu.au)  
[www.acl.edu.au](http://www.acl.edu.au)





volunteers<sup>1</sup>. This disclosure regime to apply when commercial revenue exceeds a threshold, say \$1m per annum.

#### Tender preparation guidelines

The disclosure regime recommended above would facilitate significant reforms of public tender processes. The Deloitte's report identifies clear and justifiable arguments in support of tenders incorporating drafting principles which;

1. Take into account the financial advantage conferred by charitable status in 'value for money' considerations or similar provisions;
2. Take into account the use of non paid volunteers for commercial activities by some charities in contrast with other providers (public and private) use of paid employees;
3. Take into account the primary purpose of organisations bidding for contracts in 'suitability of service' considerations or similar provisions; and
4. Provide an effective and robust process for administrative appeal of tender award decisions on legal, procedural or factual grounds.

ACL welcomes the Inquiry and, if required, I would be pleased to attend the Inquiry's hearings to assist the Committee in its deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Helen P.', with a long horizontal line extending to the right from the end of the signature.

Helen Zimmerman  
Group Managing Director

**Attachment:** Deloitte's Review of procedural fairness considerations for the upcoming tender process for Commonwealth funded training and settlement programs

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<sup>1</sup> "Valuing the contribution of volunteers also remains a hot topic and one where a clear consensus has yet to appear. Technically it must be right to recognise the contribution of volunteers, but measuring that economic contribution is by no means easy." Ray Jones, Head of accountancy policy UK Charities Commission, Accountancymagazine.com August 2008, pp 29.