



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

9 November 2012

The Hon Greg Smith MP
Attorney General for New South Wales
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Email: office@smith.minister.nsw.gov.au

Dear Mr Smith

***Reducing red tape for not-for-profit entities through a referral of powers
and/or harmonisation of reporting requirements***

Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals. It is the leading independent authority on best practice in board and organisational governance and risk management. Our accredited and internationally recognised education and training offerings are focused on giving governance and risk practitioners the skills they need to improve their organisations' performance. CSA has unrivalled depth and expertise as an independent influencer and commentator on governance and risk management thinking and behaviour in Australia.

CSA's Members are all involved in governance, corporate administration, legal practice and compliance, with their primary responsibility being the development and implementation of governance frameworks in public listed and public unlisted companies, private companies, and not-for-profit (NFP) organisations. Many of our members serve as officers of NFP organisations, or work for or are involved with companies limited by guarantee. CSA itself is a company limited by guarantee, formed to serve the interests of its Members, who are governance professionals.

Over the past 24 months, CSA has taken a keen interest and been deeply involved in the consultations leading to the creation of the federal Australian Charities and Not-for-profits Commission (ACNC) and other aspects of proposed regulatory reform for the NFP sector in Australia. CSA recognises the importance of the NFP sector and the important role that the ACNC will play in helping to reduce the compliance burden currently faced by the sector.

In 2011, the Productivity Commission undertook research into the contribution that the NFP sector provided to Australia's overall economic and social condition. Their report noted that there are some 600,000 NFP organisations (excluding body corporates) within the Australian NFP landscape, of which some 440,000 are small unincorporated organisations (such as neighbourhood tennis, babysitting, or card clubs).¹ However, within the NFP sector also reside associations (CSA is one such association), hospitals, community services, universities, sports

¹ Australian Government, Productivity Commission 'Contribution of the Not-for-Profit Sector' Research Report
Downloaded on 29 November 2011 from http://www.pc.gov.au/data/assets/pdf_file/0003/94548/not-for-profit-report.pdf

clubs, religious groups, day care centres, recreation clubs, environmental groups, job-training centres, family counselling agencies, and many more.

The NFP sector also accounts for nearly five per cent of GDP, growing at around eight per cent per year, and the sector is second only to the mining sector in terms of relative growth terms.² This represents a significant contribution to both the Australian economy and the community, through the provision of activities and services including health, social services, education, sport, arts, recreation and religious practices.

The optimal functioning of this sector, however, is impeded by the current dual regulatory regime in Australia, with state and territory-based associations' legislation co-existing with the national regulation of companies. The system is inefficient, costly and does not meet the needs of either small or large NFPs.

CSA Members believe that for any regulatory reform of the NFP sector to succeed, it is essential that the sector is granted the same national context as the private sector. A fundamental aspect of the reform process should be for the states to agree to refer powers to the Commonwealth, as occurred with the Corporations Act, to provide for all incorporated associations to be regulated nationally. CSA does not believe that the states should retain any residual role in regulating incorporated associations in the long run (it is planned that the ACNC will regulate all NFP entities over the longer term), and certainly not in regulating charities that are also incorporated associations in the short-term. The states have not retained a role in regulating private companies since 2001 and national regulation of the private sector has been of immense economic benefit and value to Australia.

The commencement of the ACNC will exacerbate the situation for charities that are incorporated as associations at state or territory level should such a referral of powers not take place, as they will need to report to both the state within which they reside and the ACNC. CSA believes that this will certainly lead to administrative double handling and onerous compliance obligations. CSA notes that these organisations are the least well equipped to be able to manage dual compliance responsibilities, being often volunteer-staffed. Moreover, to oblige them to manage dual compliance obligations is at odds with the intent of the regulatory reform process which has been recommended in multiple inquiries into the regulation of the sector over many years and actively welcomed by the sector itself.³

² The Australian Government, the Treasury, *Australian Charities and Not-for-profits Commission Taskforce: Implementation Report*, p2, June 2012 from

<http://acnctaskforce.treasury.gov.au/content/Content.aspx?doc=publications/implementationreport/html/index.htm>

³ There have been at least 15 reviews of the regulation and taxation of the not-for-profit (NFP) sector in Australia over the last 17 years, which have concluded that the regulation of the NFP sector would be significantly improved by establishing a national regulator and harmonising and simplifying regulatory and taxation arrangements. These reviews include: the 1995 Industry Commission inquiry report *Charitable organisations in Australia*; the 2001 Committee for the Inquiry into the Definition of Charities and Related Organisations inquiry report *Reported of the inquiry into the definition of charities are related organisations*; the 2008 Senate Economics References Committee's *Inquiry into the disclosure regimes for charities and not-for-profit organisations*; the 2010 *Review into Australia's future tax system*; the 2010 Productivity Commission's inquiry report *Contribution of the not-for profit sector*; the 2010 Senate Economics Legislation Committee's *Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010*; the 2011 Senate Economics References Committee inquiry report *Investing for good; the development of a capital market for the not-for-profit sector in Australia*; the 2011 Treasury consultation paper *Scoping Study for a National NFP Regulator*; the 2011 Treasury consultation paper *A definition of charity*; the 2011 Treasury consultation paper *Better targeting of not-for-profit tax concessions*; The 2011 Treasury consultation paper on the *Review of not-for-profit governance arrangements*; the 2012 Australian Charities and Not-for-Profits Commission discussion paper *Australian Charities and Not-for-profits Commission: Implementation design*; the 2012 Treasury consultation on the *Australian Charities and Not-for-Profit Commission Bill 2012*; the Standing Committee on Economics inquiry on the *Australian Charities and Not-for-Profit Commission Bill 2012*; the Parliamentary Joint Committee on Corporations and Financial Services inquiry on the *Australian Charities and Not-for-profits Commission Bill 2012*; *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012*; *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*; the Senate Standing Committees on Community Affairs inquiry on the *Australian Charities and Not-for-profits Commission Bill 2012*; *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012*; *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*

Such dual regulation would be regressive, and condemn NFP organisations to continue being subject to a greater compliance burden than the private sector, which currently has recourse to a 'one-stop-shop' national regulator. There is no private sector company in Australia that is required to meet the compliance requirements of a state-based regulator as well as those imposed by the Australian Securities and Investments Commission (ASIC) — this has been the case since the commencement of the Corporations Act in 2001. There is no public policy argument to support the imposition of dual regulation on charities, and eventually all NFPs, when our private sector companies have already been freed of such onerous obligations.

In the long run, the NFP sector will benefit most from a referral of powers, as occurred with the Corporations Act. This will ensure that charities in the first instance (and the entire NFP sector in time) have to respond to only one set of compliance obligations that operate nationally. The ACNC itself has noted in public forums that this will bring savings to the states and remove all uncertainty, confusion and duplication in any regulatory reform affecting the NFP sector.

CSA urges the NSW Government to endorse and commit to a referral of powers from the states to the Commonwealth to provide for all incorporated associations to be regulated nationally. This matter should be placed on the agenda of the Council of Australian Governments in 2013, to ensure it can be progressed in order to assist our NFP sector to benefit from national regulation.

However, CSA does recognise that the process of implementing a referral of powers could take some time to effect. The process of national and state agreement on legislative reform can be slow. Indeed, we recognise that even when there is agreement between the states and the Federal Government, as occurred with the harmonisation of OH&S legislation, states can withdraw from the process, thus delaying implementation.

CSA strongly urges the NSW Government, therefore, to give consideration in the short term to harmonisation processes which can help incorporated associations transition to regulation under the auspices of the ACNC. CSA notes, for example, that South Australia has recently announced it will make amendments to its incorporated associations and charitable collections legislation to harmonise reporting requirements, and authorise charities to collect charitable donations in South Australia, once they have formally registered with the new national regulator, the ACNC.⁴ Deputy Premier and Attorney-General of South Australia John Rau, has noted that 'the reforms would be of tangible benefit to NFP and volunteer organisations operating in South Australia'. He also stated that South Australia will examine its legislation and harmonise reporting processes for small, medium and large organisations within the framework of the new ACNC Act once the reform process is complete.⁵

CSA strongly commends this approach and notes that it would be a credit to all governments if they provide the NFP sector with the degree of consistency and support offered to the for-profit sector more than a decade ago.

Requests

CSA strongly urges that the NSW Government endorse and commit to a referral of powers from the states to the Commonwealth to provide for all incorporated associations to be regulated nationally.

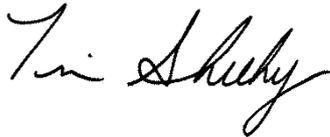
⁴ 'Government Delivering Real Reductions in Red Tape for Charities', Joint media release with Mark Butler MP, Minister for Social Inclusion, Minister for Mental Health and Ageing, and Minister Assisting the Prime Minister on Mental Health Reform and John Rau, Deputy Premier, Government of South Australia and Attorney-General, 11 October 2012 from <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/116.htm&pageID=003&min=djba&Year=&DocType>

⁵ Ibid note 4

While this process is being effected, **CSA also strongly urges** that the NSW Government make amendments to its incorporated associations and charitable collections legislation to harmonise reporting requirements, and authorise charities to collect charitable donations in New South Wales, once they have formally registered with the new national regulator, the ACNC.

CSA would be more than happy to discuss this further with you.

Yours sincerely

A handwritten signature in black ink, reading "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
CHIEF EXECUTIVE