



**Submission to:**

**Corporations and Markets Advisory Committee  
(CAMAC)**

**Review of Charitable Trusts and Trustee Companies**

**December 2012**

## Introduction

This submission briefly outlines the Community Council for Australia (CCA) response to the Corporations and Markets Advisory Committee review of Trusts and Trustee Companies.

This submission should be seen as an extension of the Charitable Alliance Submission to CAMAC. CCA is a member of the Charitable Alliance and has been directly involved in the preparation of their submission to this review. Rather than repeat the recommendations of the Charitable Alliance Submission, CCA would like our endorsement of that submission noted and will use this submission to very briefly outline the perspective of charitable and not-for-profit organisations in relation to this review.

The CCA Board and members believe the issue of charitable Trusts and the services and fees provided by Trustee Companies is a critical issue. While the sector has not yet been broadly mobilised to address emerging concerns, there are already some in the sector that are keen to run a major campaign against what is seen as greedy behaviour by some Trustee companies. Charitable Trusts in Australia are afforded significant taxation concessions and status in recognition that they are fulfilling an invaluable charitable purpose. Any diminution of the capacity of Trusts to fully realise their charitable purposes is a distortion that must be addressed.

It is important to note that this submission has been prepared through a process of consultation with the membership of the CCA (see Appendix 1 list of CCA members) and other key organisations in the not-for-profit (NFP) sector. This submission does not over-ride any positions outlined in individual submissions from CCA members.

CCA look forward to seizing the opportunity for reform of current Trustee Company arrangements, and to being part of the process of further developing policy positions that will enhance the critical role of charitable Trusts in our communities.

## The Community Council for Australia

The Community Council for Australia (CCA) is an independent, non-political, member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the NFP sector in Australia. CCA seeks to change the way governments, communities and the NFP 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 NFP 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.

## **Context: not-for-profit reform**

The not-for-profit (NFP) sector contributes over \$43 billion to GDP per annum, encompasses over 600,000 organisations ranging in size from large to very small, and is estimated to employ over one million staff (or eight per cent of all employees in Australia). Over the last decade, the growth in the NFP sector is second only to the mining industry, and employment growth has outstripped any other industry.

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.

The current Federal Government has committed to promoting social enterprise; reducing compliance costs for NFP organisations; encouraging a diversification of financing options to build a more sustainable funding base; streamlining and refining the regulation of NFPs and charities; developing a clearer definition of charities; establishing less bureaucratic reporting requirements while building community transparency; and working to improve relationships between government and the NFP sector (see Attachments 2 and 3). These are major commitments and have informed a raft of NFP sector reforms. While the benefit of these reforms may take some time to be realised, the NFP reform agenda is already well advanced.

The Australian Charities and Not-for-profits Commission (ACNC) is now established and operational. This is the first time the NFP sector has had an independent regulator dedicated to serving their needs. It is a very positive step towards reducing red tape and enhancing the role of the sector. The new regulator has followed other reforms including the signing of the National Compact between the government and the NFP sector, and the now well established work of the Not-for-profit Sector Reform Council that continues to drive reform across government from the Department of Prime Minister and Cabinet.

While the recent history of the not-for-profit sector is framed by growth and reform, there are new issues emerging. The level of individual giving continues to decline from the high in 2008, and the revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations.

Within this context it is very important to ensure the way charitable Trusts operate maximises their capacity to make grants and support our communities. Yet it is precisely now when the role of charitable Trusts is becoming even more essential that charities are reporting a reduction in funds due to increased Trustee Company fees.

The emerging awareness about the loss of revenue from charitable Trusts has also highlighted issues that have been of concern for some in the NFP sector for many years. This is particularly true in relation to orphaned Trusts that still enjoy the benefits of charitable status, but effectively have to account to no-one for their activities. Unlike Public Ancillary Funds, there is no reporting and no requirement to show how the Trust is using the funds they hold to fulfil their charitable purpose.

Given the major NFP reform agenda, changing levels of accountability for charities and increased pressure on diminishing funds, the question some in the NFP sector are now asking is 'who are the guardians of public interest in the current arrangements that apply to charitable Trusts?'

## **Charitable Trusts and NFPs – the issues**

### **The importance of charitable Trusts to our community**

It is almost impossible to overstate the crucial role of charitable Trusts in supporting our communities through their provision of targeted funding of the not-for-profit sector.

Perhaps even more importantly, the fact that charitable Trusts exist at all and the fact that they are afforded special status by governments is a fundamental endorsement of the kind of society we want to live in. In our Australia, we want to acknowledge and encourage those who are prepared to give back to their communities, those who are willing to build our collective strength and resilience by personally investing in the communities of interest represented in our not-for-profit organisations.

Australia has had a proud history of being prepared to pass around the hat, to help those who are down on their luck, to appreciate that being born into a privileged position does not absolve anyone from their obligations to their neighbour. While some might say Australia has drifted away from these ideals, we still like to think of ourselves as supporting the notion of a fair go for all. It is this very basic notion that often informs the work of not-for-profit organisations, and the creation of charitable Trusts

For CCA, the regulatory environment we provide to our charitable Trusts is not just an issue about fees, but about what kind of society we want to live in, and the degree to which we encourage and enable philanthropy.

Many in the not-for-profit sector struggle to understand the degree to which profit taking from charitable Trusts is seen by some as not only excusable, but necessary. Money held by charitable Trusts has a special status. It is there for public benefit, not private profit. To distort the purpose of charitable Trusts into a source of revenue for a financially driven company seems counter to the fundamental ideals that inform both the structure of charitable Trusts and the motivations that led to their establishment.

Over recent months there has been a growing argument from some in the not-for-profit sector that all charitable Trusts should only be managed by not-for-profit organisations. Trustee Companies charged with the management of charitable Trusts hold a special place, a special responsibility. If this responsibility is being distorted by the realities of having to satisfy shareholder interests at a time of low returns on investment, then the current Trustee Companies might need to relinquish their role and allow those committed to the purpose of charitable Trusts to accept the responsibility for managing them.

There are also concerns that the level of services provided by some Trustee Companies do not reflect a significant value add. Issues such as high staff turnover and a lack of understanding about how the core purpose of a charitable Trust can best be fulfilled are clearly impediments to maximising the public benefit of charitable Trusts. For some this is another argument in favour of only having not-for-profit organisations manage charitable Trusts.

Regardless of how people view the role of Trustee Companies, the significant increase in fees since 2009 betrays the will of those individuals who sought to make a real contribution to their community, and betrays the notion of the community we all aspire to. This is simply unacceptable.

## **The impact of increased Trustee Company fees and charges**

Charitable Trusts provide support to our community primarily through distributing funds to not-for-profit organisations to enact the charitable purpose of the Trust. There are many different approaches employed in this endeavour, making it difficult to generalise across all charitable Trusts. There are however, certain patterns and trends that seem to occur more frequently in charitable Trust funding than in most other sources of funding for not-for-profit organisations.

Charitable Trusts are more likely to be directed towards one purpose and a single charity that fulfils that purpose over a sustained period of time. This may mean one art gallery or hospital or social good organisation receives all the funds distributed by a particular charitable Trust over a period of many years. These 'sole beneficiary organisations' can generally have a high degree of confidence about the level of funding they might expect from the charitable Trust each year subject to investment return fluctuations. It is these organisations that first raised concerns about the impact of increased Trustee Company fees as the reduction in funding received made no sense and created unexpected short falls.

It is important to emphasise that these charities do not want to receive funds just to boost their bottom line. These are charities trying to provide much needed services to their communities. Any unexpected reduction in funding usually equates to a real reduction in services provided to the community.

Once it became apparent that sole beneficiary organisations were losing funding to the Trustee Companies, it was noted that the amount of funds available to be distributed through other more broadly targeted charitable Trusts was also being reduced.

It is impossible to say what the impact of this reduction in money being distributed to charities will mean in practice. This is partly because there is another characteristic of funding that is more apparent amongst charitable Trusts than government or other funding sources.

Many charitable Trusts distribute their funds largely as seed funding to promote innovation and trials of new approaches to old issues. It is quite common for charities to initially trial a new program or service using charitable Trust support, and once the approach is proven successful, to then seek to make the program or service sustainable in the longer term through government or other funding sources.

Some of the most innovative and effective government programs have come into being only because they were given an opportunity to be developed through charitable Trust funding.

The collective impact of increased fees and charges will mean millions of dollars are not distributed to charitable purposes in Australia. Communities across Australia are now not only missing out on services they may have received, but there will also be a real diminution of innovation and implementation of new approaches across the broader NFP sector.

Regardless of how people view the role of Trustee Companies, the significant increase in fees over the past twelve months will mean less services to our communities and less innovation across the whole not-for-profit sector. This is simply unacceptable.

## **Recommendations**

CCA has endorsed the recommendations of the Charitable Alliance and will not make any additional recommendations in this submission.

It should be noted, however, that some in the not-for-profit sector would have preferred CCA go much further than the Charitable Alliance and recommend sweeping changes to remove the profit motive from all charitable Trust administration. This could be achieved in a number of ways, but fundamentally it would require all charitable Trusts to be administered by a not-for-profit organisation that complies with accountability requirements similar to those applying to Public Ancillary Funds.

At the very least, the NFP sector strongly believes there is an overwhelming case for increased transparency, accountability and portability of the Trustee company role. Without these three essential elements, any solution would seem to be inadequate.

## **Conclusion**

CCA commends the Corporations and Markets Advisory Committee for their commitment to working with the various stakeholders in relation to Trusts and Trustee Companies.

It is fundamental to the review that all stakeholders have a chance to put their views.

It is also fundamental that CAMAC take account of the broader implications of their review. This is not just about charitable Trusts, not-for-profits and the Trustee companies, but most importantly it is about all those wonderful individuals who have made the decision to give back to their communities, and the broader community that benefit through their generosity.

The touchstone for any reform in this area needs to be ensuring the interests of the communities we live and work in are enhanced through proposed changes, not diminished.

The promotion of public benefit can often conflict with financial realities, but in this case, there are many more than willing to take on additional responsibility rather than allow money intended for charitable purposes to end up with shareholders of large financial institutions.

While the CCA endorse and support the recommendations of the Charitable Alliance, the broader not-for-profit sector is increasingly alarmed as awareness of the impact of recent fees increases by Trustee Companies grows.

At the very least, CAMAC needs to demonstrate through its deliberations and recommendations that it understands the fundamental purpose of charitable trusts, that it recognises the special place charitable Trusts hold in providing support across our communities, and that short term superficial responses in response to fee increases will not be acceptable either to the not-for-profit sector or the broader community.

**Current Membership – Community Council for Australia (December 2012)**

**Appendix 1**

<b>Organisation</b>	<b>CEO/Director</b>
Aboriginal Employment Service	Danny Lester
Access Australia	Sandra Dill
Access Community Group	Samantha Hill
Alcohol and Other Drugs Council of Australia	David Templeman
Alcohol Tobacco and Other Drugs Association ACT	Carrie Fowlie
ANEX	John Ryan
Associations Forum Pty Ltd	John Peacock
Australian Council for International Development	Marc Purcell
Australian Healthcare and Hospitals Association	Prue Power
Australian Indigenous Leadership Centre	Rachelle Towart
Australian Institute of Superannuation Trustees	Fiona Reynolds
Australian Major Performing Arts Group	Bethwyn Serow
Catholic Social Services Australia	Paul O'Callaghan
Church Communities Australia	Chris Voll
Connecting Up Australia	Doug Jacquier
Consumers Health Forum of Australia	Carol Bennett
<b>Drug Arm</b>	<b>Dr Dennis Young (Director)</b>
Foundation for Alcohol Research and Education	Michael Thorn
Fundraising Institute of Australia	Rob Edwards
Goodstart Early Learning	Julia Davison
<b>Good Beginnings Australia</b>	<b>Jayne Meyer-Tucker (Director)</b>
<b>HammondCare</b>	<b>Stephen Judd (Director)</b>
HETA Incorporated	Sue Lea
Hillsong Church	George Aghajanian
Illawarra Retirement Trust	Nieves Murray
Lifeline Australia	Dr Maggie Jamieson
Maroba Lodge Ltd	Viv Allanson
Mental Health Council of Australia	Frank Quinlan
Melbourne Citymission	Rev. Ric Holland
Missions Interlink	Pam Thyer
<b>Mission Australia</b>	<b>Toby Hall (Director)</b>
<b>Musica Viva Australia</b>	<b>Mary Jo Capps (Director)</b>
Opportunity International Australia	Rob Dunn
Philanthropy Australia	Deborah Seifert
Principals Australia Institute	Heather Parkes
Pro Bono Australia	Karen Mahlab (Assoc. Member)
<b>RSPCA Australia</b>	<b>Heather Neil (Director)</b>
St John Ambulance Australia	Peter LeCornu
Social Ventures Australia	Michael Traill
<b>Surf Lifesaving Australia</b>	<b>Brett Williamson (Director)</b>
The ANZCA Foundation	Ian Higgins
The Australian Charities Fund	Edward Kerr
<b>The Benevolent Society</b>	<b>Anne Hollonds (Director)</b>
<b>The Big Issue</b>	<b>Steven Persson (Director)</b>
The Centre for Social Impact	Andrew Young
<b>The Smith Family</b>	<b>Lisa O'Brien (Director)</b>
The Ted Noffs Foundation	Wesley Noffs
Volunteering Australia Inc	Cary Pedicini
<b>Wesley Mission</b>	<b>Keith Garner (Director)</b>
WorkVentures Ltd	Arsenio Alegre
<b>World Vision Australia</b>	<b>Tim Costello (Chair)</b>
YMCA Australia	Ron Mell
Workplace Giving Australia	Peter Walkemeyer
Youth Off The Streets	Fr Chris Riley
YWCA Australia	Dr Caroline Lambert

## Attachment 2

### National Compact Extract: signed by sector organisations and Government 17/3/10

#### Shared principles of the National Compact

The Australian Government and the Third Sector will work together according to these principles to achieve their shared vision:

- We believe a strong independent Sector is vital for a fair, inclusive society. We acknowledge and value the immense contribution the Sector and its volunteers make to Australian life.
- We aspire to a relationship between the Government and the Sector based on mutual respect and trust.
- We agree that authentic consultation, constructive advocacy and genuine collaboration between the Sector and the Government will lead to better policies, programs and services for our communities.
- We believe the great diversity within Australia's Third Sector is a significant strength, enabling it to understand and respond to the needs and aspirations of the nation's varied communities, in collaboration with those communities.
- We commit to enduring engagement with marginalised and disadvantaged Australians, in particular, Aboriginal and Torres Strait Islander people and their communities.
- We recognise the value of our multicultural society and we will plan, design and deliver culturally responsive services.
- We share a desire to improve life in Australia through cultural, social, humanitarian, environmental and economic activity. To achieve this, we need to plan, learn and improve together, building on existing strengths and making thoughtful decisions using sound evidence.
- We share a drive to respond to the needs and aspirations of communities through effective, pragmatic use of available resources.
- We recognise concerted effort is needed to develop an innovative, appropriately resourced and sustainable Sector.
- We acknowledge the need to develop measurable outcomes and invest in accountability mechanisms to demonstrate the effectiveness of our joint endeavours.

#### Priorities for action

Implementing the Compact principles will require coordinated engagement across Government and collaboration with the Sector to develop action plans. These plans will detail how the Compact's eight priorities for action, outlined below, will be met.

1. Document and promote the value and contribution of the Sector.
2. Protect the Sector's right to advocacy irrespective of any funding relationship that might exist.
3. Recognise Sector diversity in consultation processes and Sector development initiatives.
4. Improve information sharing including greater access to publicly funded research and data.
5. Reduce red tape and streamline reporting.
6. Simplify and improve consistency of financial arrangements including across state and federal jurisdictions.
7. Act to improve paid and unpaid workforce issues.
8. Improve funding and procurement processes

Reference: [www.nationalcompact.gov.au/resources/national-compact/](http://www.nationalcompact.gov.au/resources/national-compact/)



## Attachment 3

### **Statement of government support for PC recommendations (extract from the Communiqué from the second meeting of the Not-For-Profit Sector Reform Council, 18 May 2011)**

With regards to the Productivity Commission research report, Contributions of the Not for Profit Sector, the Minister advised that the Commonwealth Government has accepted 'in-principle' all but one of the recommendations relating to the Commonwealth. The one recommendation not supported was recommendation 9.5 pertaining to program related social innovation funds. While encouraging greater innovation is critical, the Government believes this should be pursued in other ways.

**Reference:** [www.notforprofit.gov.au/node/140](http://www.notforprofit.gov.au/node/140)