



Submission to:

The Senate Community Affairs References Committee

The impact on service quality, efficiency and sustainability of recent Commonwealth community service tendering processes by the Department of Social Services.

March 2015

Introduction

Community Council for Australia (CCA) welcomes the opportunity to provide a submission to the Senate Community Affairs References Committee Inquiry into the Department of Social Services (DSS) community services tendering processes. It is important to note that this submission does not override the policy positions outlined in any individual submissions from CCA members.

This submission has been prepared in consultation with CCA members (listed in *Attachment A*) and key organisations in the NFP sector. While many CCA members have participated in the DSS community services tendering processes, others have highlighted similar processes and issues in the implementation of tendering and grants processes across a range of Federal departments including in education, health, employment, overseas aid, and Attorney Generals. A number of CCA members that receive no government funding have also expressed their concern about the negative impact the DSS processes on the broader charities and not-for-profit sector.

Given the diversity of experience among CCA members this submission does not focus on specific details of each aspect of the recent tendering processes – others will rightly provide commentary on their direct experiences. This submission is focused on the broader implications of the DSS tendering processes in terms of both government relations with the not-for-profit sector and the impact of tendering processes on the sustainability and productivity of the sector. To this end, the submission draws on a range of sources including previous work of the Productivity Commission and the Commonwealth Department of Finance and Deregulation in making ten recommendations.

CCA welcomes any further opportunity to provide input into improving the way governments engage with the not-for-profit sector, particularly in relation to tendering processes.

The Community Council for Australia

The Community Council for Australia is an independent non-political member based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

Summary of Recommendations

1. **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 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.**

(Recommendation 12.7 Contribution of the Not-for-Profit Sector, Productivity Commission, 2010)
2. **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.**

(Recommendation 12.8 Contribution of the Not-for-Profit Sector, Productivity Commission, 2010)
3. **All government tendering processes should actively involve those being contracted to provide services and those who will benefit from the services in the design and implementation of programs.**
4. **All government tendering processes should have a publicly stated policy goal, and a measurable indicator of success.**
5. **Funding decisions need to be supported by a clear and transparent account of the criteria used to assess applicants, the process by which these criteria were applied, the information used to inform decision making, and the rationale for final decisions.**
6. **Expertise in the area of service provision being contracted should be included in all decision-making panels.**
7. **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 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.**

(Recommendation 12.6 Contribution of the Not-for-Profit Sector, Productivity Commission, 2010)
8. **All government contracts seeking to achieve a social purpose should have at least a 5% allocation to support the collection and reporting of appropriate performance measures.**
9. **Contracts with not-for-profits to provide community services should be for at least three years and no program should lose funding with less than six months' notice.**
10. **Establish a closed independent feedback loop to enable NFPs a confidential solutions focused avenue in provision of feedback on government relationships with the sector.**

Context: the not-for-profit sector

The not-for-profit sector turns over more than \$105 billion annually, contributes over \$55 billion to GDP per annum, and employs over one million staff (or eight per cent of all employees in Australia). The sector holds over \$175 billion in assets, and across the last decade, sector growth has continued at approximately 7% a year, greater than any other industry group.

These figures tell only a small part of the story. The real value of the NFP sector is often in the unmeasured contribution to Australian quality of life. NFPs are at the heart of our communities; building social connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians. In sum, they make us a more resilient society.

The importance of the NFP sector is now being internationally recognised with many governments putting in place measures to increase NFP productivity. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement and productivity within the NFP sector.

In Australia there are currently various initiatives seeking to promote social enterprise; reduce compliance costs for NFPs; encourage a diversification of financing options to build a more sustainable funding base; streamline and refine the regulation of NFPs and charities; establish less bureaucratic reporting requirements while building community transparency; increase philanthropy and improve relationships between government and the NFP sector. CCA supports all these activities.

The establishment of the ACNC is the first time the NFP sector has had an independent regulator dedicated to serving their needs and enhancing their capacity. It has already proved to be a positive step towards red tape reductions, increased transparency and trust in the community by prospective volunteers and donors.

The recent history of the NFP sector is framed by growth and reform, but there are a number of new issues emerging. The level of individual philanthropic giving has still not recovered to the high in 2008. At the same time, revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations.

There have been numerous reports and recommendations relating to the NFP sector over the last decade, but it is only in recent years that governments have enacted some of these recommendations and embarked on a long overdue process of reform and enhancement.

In the context of recent changes, the NFP sector is slowly but surely finding its voice - building its collective power and seeking real reform that will provide substantial savings to government and tangible benefits to the community.

The inability of governments to streamline tendering processes, contract management and programs monitoring has repeatedly been identified as a major barrier to improving productivity in the not-for-profit sector in Australia. The lack of certainty in government funding and contracting processes undermines ongoing investment.

Given the size of the sector and its critical role in our community, the Federal Government can achieve real economic and social benefits if it chooses to strategically invest in strengthening our communities and our NFPs by improving the way it relates with the sector, as outlined in this submission.

The DSS Tendering Processes

As noted in the introduction, the primary focus on this submission will be on the implications of the DSS tendering processes for government performance management and the broader not-for-profit sector. At the same time it is important to note the primary concerns around the DSS processes as these concerns inform and reflect issues addressed in this submission.

Prior to listing these concerns, it is important to note that CCA members acknowledge the government is accountable to taxpayers and the electorate for budgets and funding of programs and services. The government clearly has a responsibility to make decisions about what it will or will not fund, what the priorities are, and how those priorities can best be achieved.

CCA does not support historical funding models where organisations that have previously received government funding automatically continue to receive government funding with little or no performance reporting or decision making about whether government priorities and program goals are still being met.

CCA members have identified the following issues with DSS tendering processes:

1. No consultation with providers or the communities served about:
 - a. the goals of each program area
 - b. the prioritising of certain areas over others
 - c. the ways in which costs might be reduced or programs improved
 - d. measures of both past performance or intended future provision of services
 - e. the capacity for collaboration and joint proposals from tenderers
 - f. the criteria used to select tenderers
 - g. the information deemed relevant in informing decisions
 - h. the decision making process
2. A centralised top-down imposition of requirements on those with the practical expertise and knowledge about what works and what does not resulting in:
 - a. inability to align services and issues
 - b. inability to propose flexible solutions in addressing local issues
 - c. no capacity to propose ways of meeting government policy goals and targets
3. Apparent disregard or lack of knowledge about the reality of running programs and services leading to inappropriate expectations and imposition of requirements:
 - a. inappropriate time lines
 - b. inadequate time to prepare submission
 - c. ongoing uncertainty in decision-making processes with time lines repeatedly changed
 - d. decisions handed down with little regard for the real-world operation of turning the delivery of human services 'on' and 'off'
4. No government performance management framework, risk management framework, or reporting framework on cost effectiveness for the tendering process.

Key Issues Arising from the DSS Tendering Processes

Tendering practices are in desperate need of reform

There is a dog's breakfast of approaches to human service contracting across Federal government agencies. It seems each agency has its own rationale and its own set of mandatory components and priority principles for its particular procurement practices and reporting requirements. Even within some agencies, there are high levels of inconsistency in approaches and processes.

The Productivity Commission very clearly highlighted the failure of Australian governments to adopt a more measured, efficient and outcome focused approach to the outsourcing of services, contracting and funding of not-for-profit organisations. The Productivity Commission Report into the Contribution of the Not-for-Profit Sector, made the following two recommendations:

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 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.***

(Recommendation 12.7 Contribution of the Not-for-Profit Sector, Productivity Commission, 2010)

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.

(Recommendation 12.8 Contribution of the Not-for-Profit Sector, Productivity Commission, 2010)

These recommendations remain critical to improving the productivity of government tendering processes and service providers seeking to strengthen our communities.

Engagement is essential

The DSS tendering processes were an attempt improve the process by lengthening the terms of contracts and reducing the number of separate contracts or agreements individual not-for-profit organisations may have to apply for or complete. However, these positive changes to tendering processes were undermined by the way this task was approached. A key reason for this failure is that the recommendations of the Productivity Commission around consultation were not taken into account. There was little or no engagement with service providers or the communities they serve. Without real engagement, government tendering processes are headed to inadequacy.

Good tendering processes actively involve those being contracted to provide services and those who will benefit from the services in the design and implementation of programs.

Tendering for purpose / public value

The focus in any discussion about government tendering processes needs to be on policy goals. This should not be an exercise in listing the inputs and outputs as judged by officials who often have limited understanding of the communities involved or the nature of services being provided.

The push for increased involvement at a local level and greater control in how local issues are addressed is also driving reform in the way many governments around the world are approaching social and community issues. As highlighted in the Commonwealth Financial Accountability Review paper in 2012:

‘Changes are occurring in the way government meets citizen expectations and policy challenges. Increasingly, the government collaborates with other jurisdictions and parties in designing and delivering services. Over time this is likely to include greater participation by citizens in service design and delivery as a means of developing more effective and personalised policies and programs. This will challenge historical concepts of accountability and transparency and bureaucratic control.’

(Is less more – towards better Commonwealth performance, Chapter 3, The Case For change, pg. 17)

There is pressure on governments to deliver sustained change rather than continuing to invest tax payer funds in supporting inadequate responses that have little or no real impact in addressing ongoing issues in Australian communities.

If tendering is to achieve real public value, if it is to deliver on the government’s policy goals, it needs to be explicit at the outset that the policy goal is the purpose of the tender process. The policy goal should drive the tender process and performance monitoring with much less emphasis on inputs and outputs.

Performance management

Performance management is partly about accountability because we know that what gets measured and reported gets done. As the Commonwealth Financial Accountability Review discussion paper highlighted:

It is preferable to have fewer, more meaningful indicators that focus on what matters.

(Chapter 7, Improving performance, pg. 50)

Measurement of what matters (the policy goals and objectives) is good, but measurement that does not influence decision making is pointless if we are seeking to impact government performance.

This also applies when considering the performance of not-for-profit agencies in fulfilling government policy goals through service provision. Being able to report performance is one thing, but having that information used to inform decision making seems to be another.

‘Even where good evaluation and review exists, this information is not readily available to inform government decision making, especially on cross-portfolio matters.... There is no point to evaluation if results are not used.’

(Chapter 7, Improving performance pgs. 52 and 53)

Performance measures against policy objectives are often not available within federal government agencies. This is unacceptable. Of equal concern is that where this information exists it is not more widely available or used to inform better investment and better practice.

The DSS tendering processes are another example of how each new procurement process seems to operate largely in a vacuum with little use of past performance data to inform future contracting. This is particularly true where the performance information traverses a number of program areas and government agencies.

All too often the fundamental elements that drive performance – the competency and capacity of the individuals, management teams, organisations, their relationship with their customers and their communities, the capitalization, business plans, other investors, competitors, etc. – are simply not factored into either the performance management and reporting processes or the risk management framework. Governments need to make their investments in achieving policy outcomes work and they need to be able to say how they are going to address failure. How do governments do this without this fundamental information about performance and capacity?

The major problem with most performance monitoring currently undertaken is that it is often disconnected from policy goals. The experience of not-for-profit organisations is that the compliance and reporting requirements for many of the contracts and funding grants they receive are not directly related to the actual policy goal under which the relevant program operates.

In an outcome blind measurement system even the best policy goals can be lost in translation by government agencies because they focus on inputs and outputs within specific programs rather than achieving the desired policy outcomes. If a program is outcome blind, what performance is being measured and how useful is that measurement?

Not-for-profit organisations are driven by purpose. They seek to achieve real outcomes for the communities they serve, but with most government funding, not-for-profit organisations are rarely allocated the tools, time or resources needed to provide the kind of performance reporting that might inform better government policy.

Developing this approach may require letting go of some of the existing approaches and investing in alternative policy driven measures of performance. It may also mean accepting that not all programs will be successful, that we need to learn from mistakes by sharing the information and using it to drive improvements in achieving important policy goals.

Performance reporting

If we want to get better at meeting government policy goals and achieving better performance, we need to get better at both measuring and reporting performance. Wherever possible, performance measurement and reporting should provide comparable (over time and over programs) indicators of actual performance against policy goals.

Governments invest billions of dollars of public money in purchasing services to achieve policy goals. It is not unreasonable to expect that the outcomes of government investment to be reported transparently to the community which has a real stake in the policy outcomes.

Some Commonwealth agencies will not disclose reports on performance. Any information that might be negatively interpreted or lead to potential criticism is seen as problematic. This poorly thought through risk management strategy leads to inappropriate barriers around releasing performance information. At the same time, the pressure to increase the amount of information collected as a way of deflecting risk drives increased reporting and compliance requirements.

The outcome of these two pressures is that more information is collected and less is actually reported or used. This is a situation that leads to enormous frustration within the organisations being asked to provide information to government agencies. Many not-for-profit organisations have repeatedly raised concerns about the level of detail being requested in areas related to inputs and outputs, while no outcome data is collected. How much of the information provided in this particular tender application was actually used to inform funding decisions and how much of that actually related to performance?

Government agencies are also often reluctant to provide the tools, time or resources necessary to enable not-for-profit organisations to collect outcome and impact data. If we want to know which agencies are more likely to deliver on the government's policy goals, the kind of information being collected needs to change and resources provided to collect this information needs to increase.

Ideally a percentage of all government allocated funding would be directed towards follow up and performance measurement, but the lack of adequate resourcing for performance monitoring and evaluation has become normal practice. As a consequence, government agencies fund programs and services largely based on written submissions without knowing about their organisational or programmatic outcomes, the impact on the community, or whether their approach is achieving government policy priorities.

Transparent performance reporting will drive real improvements in performance, but not unless governments actually commit to collecting and making public a much higher level of outcome and impact reporting, not just of the not-for-profits they contract, but of their own performance in achieving government policy goals.

Managing risk

There has been a clear trend towards increasing compliance and micro-management of not-for-profit organisations as a way of deflecting risk. This approach is not only counter-productive, but also displays a regrettable lack of understanding about the importance of good risk management practices. There is very limited evidence to suggest that more detailed contracts containing more conditions, increased compliance and reporting requirements, more frequent reporting and shorter contract periods reduce risk or improve outcomes. In fact, there are many areas of government contracting where lengthier contracts and less compliance is a much better way to manage risk, including in critical areas such as indigenous health and wellbeing programs and services.

The achievement of important government priorities and policy objectives is not a risk free activity. Avoidance of risk is often a good way to ensure policy ineffectiveness.

The lack of good risk management knowledge is often compounded by a lack of understanding about the actual risks involved in the services being funded, the organisations being funded to accept those risks, and the best ways of managing those risks.

In business investment, factors such as the nature of the people involved in the management of a company, the level of expertise, competence and experience, the past track record of the management team, the past track record of the company, the existing level of capitalization, who else has invested, the proposed business plan, cash flows, potential competitors, market share, etc. are all considered in judging the risk against the likely return.

There is little evidence that risk management frameworks are being applied in the way governments choose to invest in, fund, contract or grant money to not-for-profit organisations. It is much more likely that there will be the kind of tender processes we have seen through DSS in which relatively inexperienced government officials make decisions based on predetermined criteria relating almost exclusively to the work to be undertaken – not the organisation that might undertake it. What is of even more concern is that such tender processes may operate with little or no real engagement with prospective tenderers, little real risk analysis, and the process operates in a vacuum with no reference to history, content knowledge, performance information or real market analysis.

The Productivity Commission highlighted this issue in its report into the productivity of the not-for-profit sector and recommended:

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 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.***

(Recommendation 12.6 Contribution of the Not-for-Profit Sector, Productivity Commission, 2010)

The Commonwealth Financial Accountability Review not only acknowledged the inadequacy of risk management skills in government, but also that implementing this approach will require culture change:

Leaders must also support innovation by fostering creativity and ideas – a culture of risk aversion may prevail if innovation is not rewarded. ... Risk management is not about eliminating all risks.

(Chapter 8, Engaging with risk, pg. 60)

Terms and length of contracts

One of the major obstacles to good management of government programs and services is the issue of capacity to work to timelines that allow real change to be both measured and achieved.

The timing of the processes involved in this DSS tendering was one of the major issues identified by CCA members. Inadequate time frames to prepare tenders and then the ongoing extensions do not reflect an understanding for the reality of running programs and services; and seemed to indicate that not-for-profit organisations, their staff and the communities they serve could be treated with disregard.

In areas such as human service delivery, it is almost inconceivable that there is any place for a 12 month contract, let alone two month extensions or six month extensions with no guarantee of future viability. Simply establishing a program or services, employing staff, obtaining office space, communications, transport and other infrastructure require time and resources. Yet some government agencies expect not-for-profits to be able to turn program delivery on and off like a tap.

The issue of timing becomes critical when talking about employment, future planning, building of capacity, measurement of performance and improvement of outcomes.

While there is a place for shorter term pilot programs and one-off grants, these should be the exception, not the norm. There should be a three year minimum for most ongoing contracts for services provided by not-for-profit organisations that involve the employment of staff.

As part of this approach, there should also be a minimum six monthly notice period to enable staff entitlements and infrastructure leasing to be properly managed.

There are a number of CCA members who have extensive human service programs still awaiting the outcome of government decisions to determine whether some of their programs will be funded in the next financial year. By any measure, this is not good program management.

If there is one short term strategy that could significantly reduce risk and improve performance, it is adopting a more realistic approach to the length of contracts and timing of notices for the renewal or cessation of program funding. Such a measure should be a very high priority.

Conclusion

CCA believes the DSS tendering processes are an example of how well intentioned government officials engage in practices that result in dysfunctional program management. The uncertainty created through ongoing extensions, lack of transparency, lack of rationale, short term notice periods, lack of community engagement, lack of service provider engagement, lack of appropriate risk management or performance management within government all compound what is a very difficult role for not-for-profit organisations seeking to work collaboratively with government to achieve shared goals.

The reality is that despite many attempts to improve these processes over the years, there are some government agencies where the culture and practice of contracting with not-for-profit organisations is counter-productive to the achievement of government policy. What is most disappointing is recognising that the failures of the DSS processes are not unique and will probably be repeated again. It seems that in some areas of government, concepts such as performance management, performance reporting, and risk management have been deconstructed and reassembled in forms that disguise their original intent.

CCA strongly supports the need for reform, particularly with the ongoing engagement between not-for-profit organisations and federal government agencies. The level of counter-productive compliance activity and lack of performance based management is having a very negative impact on not-for-profit organisations, governments and the broader community.

The not-for-profit sector wants to work with government to improve tendering processes to reduce waste and see taxpayer dollars achieve more for our communities. Savings can be achieved by first identifying what works and what doesn't, drawing on this performance reporting to inform decision-making, engaging more actively with the not-for-profit sector and the communities they serve, and acknowledging the need for continuous improvement in the relationship between governments and the not-for-profit sector.

The harsh reality for most governments is that income levels are stalling while demand for services continues to increase. Part of the solution to this tension is achieving real productivity within government and the NFP sector. Achieving these gains however, requires more than another set of words or guidelines people can sign off on. Achieving positive change will require an initial investment in time and resources.

A more productive tendering process between governments and NFPs will result in stronger and more resilient communities across Australia.

Current Membership – Community Council for Australia *Attachment A*

Organisation

2Realise

Access Australia's National Infertility Network

Alcohol Tobacco and Other Drugs Association
ACT

ANEX

Australian Council for International
Development

Australian Healthcare and Hospitals
Association

Australian Indigenous Leadership Centre

Australian Institute of Superannuation
Trustees

Australian Major Performing Arts Group

Australian Women Donors Network

Canberra Men's Centre Inc

Beyondblue

Charities Aid Foundation

Church Communities Australia

Churches of Christ Community Care VIC & TAS

Community Colleges Australia

Compass Housing Co Ltd

Connecting Up Australia

Drug Arm Australasia

e.motion21

ethicaljobs.com.au

Family Life Services Australia

Foresters Community Finance

Foundation for Alcohol Research and
Education

Foundation for Young Australians

Fundraising Institute of Australia

Good Beginnings Australia

HammondCare

CEO/Director

Rowena Stulajter

Sandra Dill

Carrie Fowlie

John Ryan

Marc Purcell

Alison Verhoeven

Rachelle Towart

Tom Garcia

Bethwyn Serow

Julie Reilly

Greg Aldridge

Georgie Harman

Lisa Grinham

Chris Voll

Paul Arnott

Kate Davidson

Greg Budworth

Anne Gawen

Dr Dennis Young (Director)

Cate Sayers

Michael Cebon (Associate Member)

Jo Cavanagh

Belinda Drew

Michael Thorn

Jan Owen

Rob Edwards

Jayne Meyer-Tucker (Director)

Stephen Judd

Hillsong Church

Lifeline Australia

Life Without Barriers

Maroba Lodge Ltd

Missions Interlink

Mission Australia

Musica Viva Australia

Opportunity International Australia

Our Community

Philanthropy Australia

Port Phillip Housing Association

PowerHousing Australia

Pro Bono Australia

Relationships Australia

RSPCA Australia

SANE Australia

SARRAH

Save the Children

St John Ambulance Australia

Social Ventures Australia

The Australian Charities Fund

The Benevolent Society

The Big Issue

The Centre for Social Impact

The Reach Foundation

The Smith Family

The Ted Noffs Foundation

Variety Australia

Volunteering Australia

Wesley Mission

World Vision Australia

YMCA Australia

Youth Off The Streets

YWCA Australia

George Aghajanian (Director)

Jane Hayden (Director)

Claire Robbs (Director)

Viv Allanson

Pam Thyer

Catherine Yeomans

Mary Jo Capps (Director)

Robert Dunn

Denis Moriarty (Associate Member)

Louise Walsh

Karen Barnett

Lisa Grinham

Karen Mahlab (Associate Member)

Alison Brook

Heather Neil (Director)

Jack Heath

Rod Wellington

Paul Ronalds

Peter LeCornu

Michael Traill

Edward Kerr

Anne Hollonds (Director)

Steven Persson

Andrew Young

Sarah Davies

Lisa O'Brien (Director)

Wesley Noffs

Neil Wykes

Brett Williamson (Director)

Rev Keith Garner (Director)

Rev Tim Costello (Chair)

Ron Mell

Fr Chris Riley

Dr Caroline Lambert