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## Turning blue sky into solid ground

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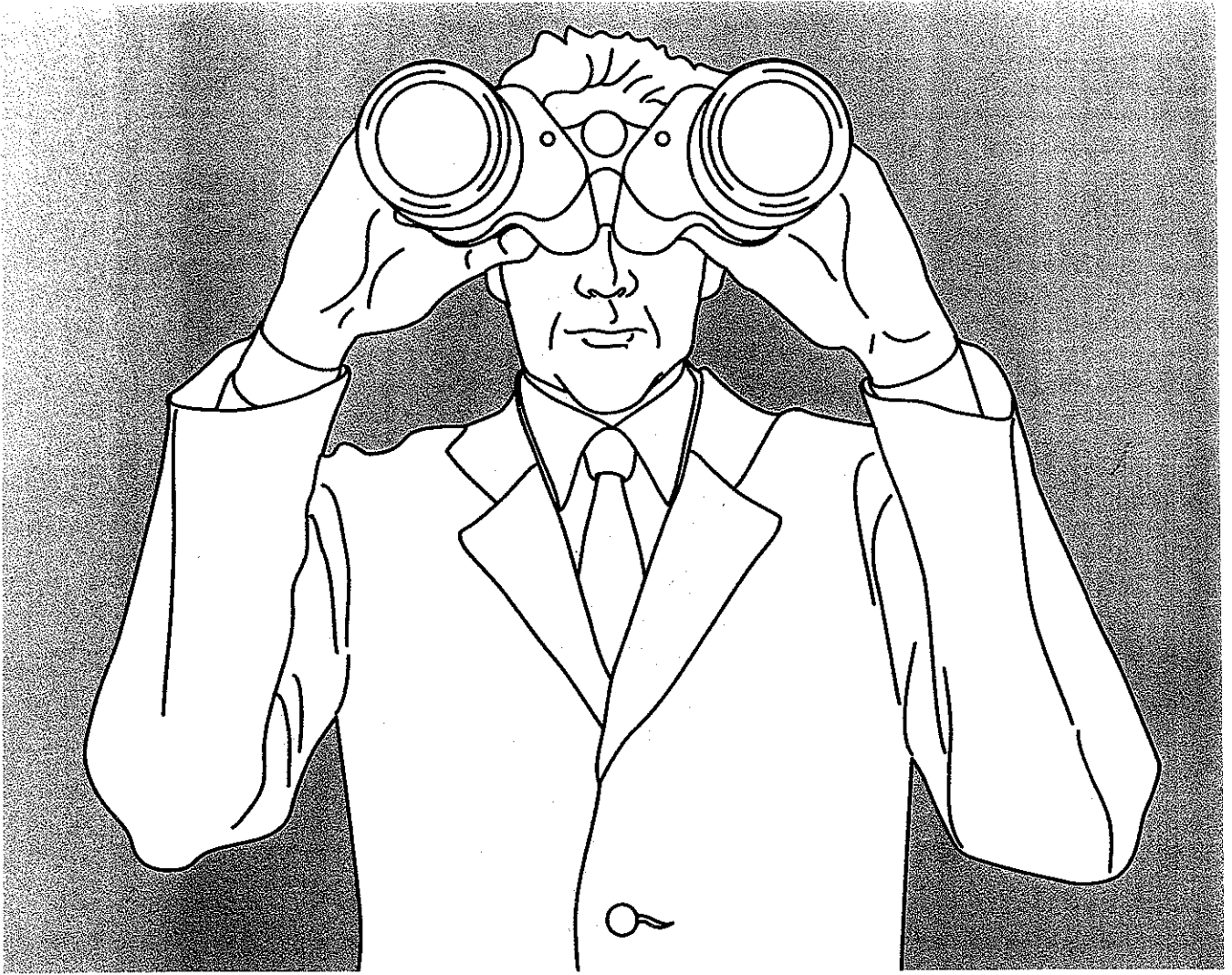


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# TURNING BLUE SKY INTO SOLID GROUND

The prospects for not-for-profit regulation arising out of recent sector-wide reviews. **By Professor David Gilchrist**

Over recent years the regulatory horizon for not-for-profit (NFP) organisations has become a little less hazy as the national reform focus has shifted squarely to the Third Sector. Arguably, the last significant regulatory change for the Third Sector was rolled out in 1999-2000 when the taxation system at the national level was dramatically overhauled. The Australian Taxation Office became the sector's quasi-national regulator as NFPs of all types became engrossed in ensuring they were complying with taxation reporting requirements. Acronyms like DGR and BAS entered our national vocabulary to stay.

One major result of this process has been the increasingly national flavour to the regulatory debate surrounding NFPs. While a number of state level regulatory changes have been introduced around Australia during the past decade, a head of steam has been building over the past three years particularly seeing an increasing focus at

a national level on perceived problems and inefficiencies associated with regulation in the sector.

### Problem areas

The kinds of problems that have been stressed include issues such as the lack of uniform requirements leading to inefficiencies for those NFPs operating across jurisdictions. Further, the differing jurisdictional requirements for financial reporting and acquittal, differing requirements regarding the mandating of audit and for lodging with a regulator both organisational data and details of those managing the organisation are all seen as shortcomings that are likely to result in an increasing lack of sustainability in the not-for-profit sector. Further, it is thought that potential philanthropists are likely to shy away from directing resources to where there is great need but a perceived lack of governance. Often the solution to these issues is said to be in the establishment of a national regulator reporting to a federal government minister and establishing a regulatory regime, including accounting standards, that extends across all NFP endeavours. These issues have been raised over the past three or so years in the context of a number of reviews undertaken at a national level.

### Past recommendations

For instance, in 2008 the Senate Economics Standing Committee reported on disclosure regimes for not-for-profit organisations in force across Australia. While it considered financial reporting issues, the Committee reviewed all aspects of regulation. The resulting report incorporated 15 recommendations. Among other things, the recommendations made included that a federal minister be appointed to oversee a federal not-for-profit unit that would be based in the Department of Prime Minister and Cabinet, that a national regulator should be established and that a single form of incorporation should be allowed following the voluntary transfer of states' powers in this regard to the Commonwealth. While this is old news in that the report has been in circulation for a little over 18 months, this report did set the scene for subsequent investigations and also set in train practical outcomes that have largely reinforced

the recommendations made. One such practical outcome was the establishment of the Council of Australian Governments' regulatory reform agenda for the sector.

### Regulatory reform commences

During 2009, and with relatively little fanfare, the Council of Australian Governments (COAG) developed and began its *Regulatory Reform of the Not-for-profit Sector Implementation Plan*. The published version of this plan is relatively simple and focuses on the national adoption of the Standard Chart of Accounts developed by the Queensland University of Technology. This is an important first step – not just from an accountant's perspective – but all parties involved in the sector or having an interest would realise that this is a foundation block for the development of a uniform national regulatory system.

The exercise established not-for-profit regulatory reform squarely in the COAG process and opens the door for more substantial decisions to be taken at a national level. Jurisdictions in the Australian Commonwealth are rolling out the Standard Chart of Accounts, in various ways, to elements of the sector in accordance with local self-determined plans. The current agreement sees fundraising and gaming exempt for the moment. However, it is planned that these elements are also to be caught during the 2011-12 financial year. The final step in this reform will be for all jurisdictions to adopt a nationally consistent chart of accounts during the 2012-13 financial year. While many accountants have seen this development as a sound step toward more effective financial reporting structures leading to higher levels of financial sustainability, there are question marks over the extent to which jurisdictions will provide training funding and support for the implementation process and the extent to which the process itself will see a marked improvement in accounting and financial knowledge throughout.

### More to follow

According to its plan, the next major element of the COAG agenda is the mapping of gaming and fundraising legislation in force in Australia with a view to assessing the impact of this legislation on the proposed application of the Standard Chart of

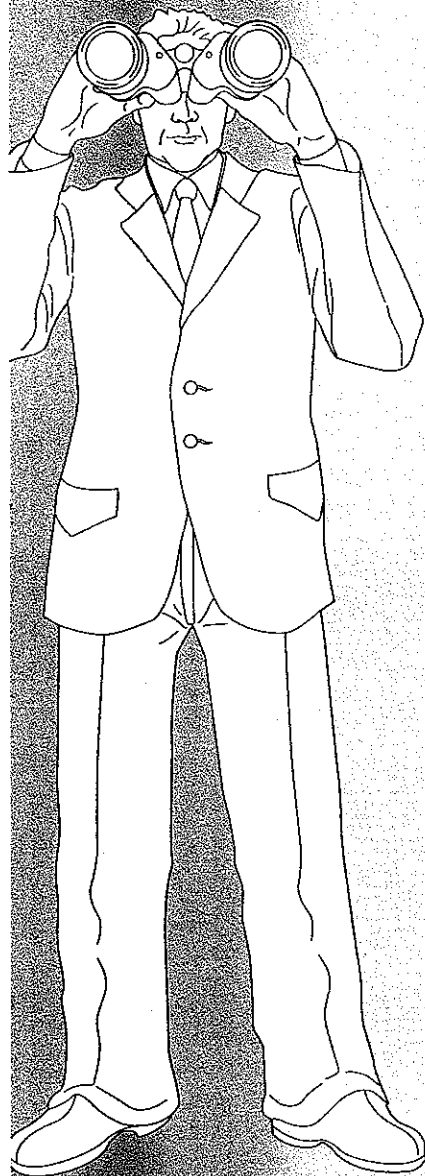
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Accounts to organisations working in these areas. It is not difficult to imagine this exercise resulting in a drive to establish national regulation in these two important areas as the mapping exercise identifies jurisdictional differences and contingent or real inefficiencies. Such an outcome is supported by the recent publication of the Henry Review into the taxation system and the Productivity Commission's report into the contribution of the not-for-profit sector. Both of these reports were published this year and both make substantial and far-reaching recommendations that reinforce the intent of the recommendations discussed above and suggest a framework to which the COAG work currently being undertaken can turn towards.

### Henry Review recommendations for the sector

The Henry Review has been a very high-profile undertaking and the report attracted considerable attention across the Australian community. Of the 138 recommendations made, four were directly aimed at the not-for-profit sector. Henry reinforced previous reports' recommendations by adding his voice to the push for a national regulator for not-for-profits with generally the same attributes that were identified above.

The sector would have been pleased to note that opportunities for efficiencies were identified in two recommendations. One related to the suggestion that tax concessions should be applied across all activities of NFPs, including commercial activities. A second proposed efficiency reform suggested related to Henry's belief that the taxation regime relative to the operation of clubs should be changed to make administration easier. One way to do this might be to have one reduced rate of tax over all income. The fourth recommendation made with regard to NFP organisations relates to the phasing out of FBT concessions over a period of 10 years. While there appears to be little



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political appetite for this recommendation presently, it would be strategically sound for not-for-profits to consider the impact the implementation of such a recommendation would have. Many NFPs avail themselves of the current concessions, the removal of which may have an impact on costs (as employment contracts including the provision of fringe benefits would still need to be fulfilled regardless of the tax position of the organisation) and on retention if staff were no longer able to enjoy these benefits.

**Call for a national regulator**

The Productivity Commission's report into the contribution of the not-for-profit sector made significant recommendations pertaining to the establishment of a national regulator and 'one-stop-shop' for not-for-profit support. The Commission was also keen to see a hardening of regulation around the winding up of organisations and more substantial requirements as to disposal of net assets. The report was probably the widest ranging in relation to the sector and dealt with issues as diverse as the development of a sector debt market and the establishment of a national portal. Two further reviews have recently been announced by the Productivity Commission, which are likely to impact on not-for-profit governance. The first relates to disability care and support and will seek to examine, inter alia, scheme funding and design, impacts on the workforce and governance. The second review relates to caring for older Australians. This review will focus, inter alia, upon future workforce requirements, regulatory options and funding options. While it is early days, it seems likely that the regulatory environment for not-for-profits will be examined in both of these reports because the nature of the regime will affect the sustainability of service provider organisations and because there is an increasing appetite for reform of the sector along national lines. It is concerning to a degree that elements of the

sector are being reviewed individually and, hopefully, if a national regulatory scheme is to be introduced the lessons learnt overseas will ensure a uniform approach to reform ideas.

**Disclosure requirements under review**

Further to these reports, the Australian Accounting Standards Board is currently working through a project aimed at reviewing disclosures by private sector entities. This project was established in 2009 and has, to date, considered the issues of the definition of not-for-profit entities and performance reporting. The reporting of non-financial performance data has the prospect of being of great value to the sector. The idea that finance is but one aspect of performance and that sustainability relates to delivery of outcomes as much as financial capacity building is of great importance. Additionally, if a standard can be developed relative to performance reporting – and this is not an easy thing – there would likely be a basis for assurance. Looking forward, the Board expects to have an exposure draft issued by the first quarter of 2011 relative to service performance reporting.

**Working to the one end**

Clearly, if the Board and those other organisations reviewing regulatory requirements for the sector are not talking there could quite easily be confusion and difficulty where organisations need to comply with more than one regime – an outcome that would defeat the purpose of the reform process. Further to this, it would seem of great value for the accounting interests and the broader regulatory interests to come together to ensure the compliance burden is reduced to the extent possible and that the perceived opportunities for reform are in fact achieved.

Accountants in the sector really need to be watching these various processes and be prepared to contribute when input is sought so that the practicalities of the ideas being put can be fully considered at the operational level. ▀



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