STANDING COMMITTEE ON PUBLIC ACCOUNTS

Review of Auditor-General's Report No 1 of 2006: Regulation of Charitable Collections and Incorporated Associations

AUGUST 2008

Report 17

Committee Membership

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Resolution of Appointment

The Legislative Assembly appointed the Standing Committee on Public Accounts on 7 December 2004 to:

(i) examine:

(A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and

(B) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;

(iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and

(iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue and sustainability.

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2.26 The Committee recommends that the Auditor-General undertakes a performance audit of the Office of Regulatory Affairs to assess the quality of its internal processes and how effectively it is contributing to the aim of reducing the burden of regulation.

RECOMMENDATION 2

3.6 The Committee recommends that section 93 of the *Associations Incorporation Act 1991* be amended to allow the registrar general to begin the process to remove an association's incorporation if the association has not lodged an annual return with the registrar-general in relation to each of the last 2 years.

RECOMMENDATION 3

3.8 The Committee recommends that section 93 of the *Associations Incorporation Act 1991* be amended to allow the registrar-general to begin the process to remove an association's incorporation if the association has submitted three consecutive annual returns with qualified audits and the reason for the qualified audit is not merely technical.

1 INTRODUCTION AND CONDUCT OF INQUIRY

Referral of the inquiry

Auditor-General's Performance Audit Report No 1 of 2006: *Regulation of Charitable Collections and Incorporated Associations*

1.1 The Auditor-General's Report was tabled in the Legislative Assembly on 28 March 2006 and consequently referred to the Committee for inquiry[1].

1.2 The Auditor-General's Report presents the results of a performance audit that assessed whether:

- charitable collections and incorporated associations are currently being adequately monitored;
- Administration of the functions is consistent with the relevant acts.

Terms of Reference

1.3 The Committee's terms of reference were to examine the Auditor-General's Report and report to the ACT Legislative Assembly.

Conduct of the inquiry

1.4 The Committee received a briefing from the Auditor-General on the Report on 14 June 2006. The Committee resolved on 26 July 2006 to inquire further into the Auditor-General's Report.

Advertisement

[1] Legislative Assembly for the ACT, Sixth Assembly, Minutes of Proceedings, 28 March 2006, p 597

1.5 The Committee called for written submissions by placing an advertisement in *The Canberra Times* of 30 September 2006, *City News* of 5 October 2006 and the *Chronicle* of 3 October 2006.

Submissions

1.6 The Committee received three submissions. The individuals and organisations that lodged submissions are listed in **Appendix A**.

Public hearings

1.7 The Committee held public hearings on 9 May and 12 September 2007. Witnesses who attended the public hearings are listed in **Appendix B**.

1.8 The Committee met on **14 August 2008** to discuss and adopt the Chair's draft report.

2 CHARITABLE COLLECTIONS

2.1 The generosity of Australians was highlighted by the almost $400 million donated in response to the Boxing Day Tsunami of 2004. Charitable donations are not limited to specific events however. Even if money donated for Tsunami relief is excluded, in the twelve months to the end of January 2005, Australians gave $5.7 billion to a wide range of charitable bodies. Almost 87 per cent of the adult population gives to charity at an average of $424 per individual annually. A further $2 billion was provided to non-profit organisations via events and "charity gambling" such as raffles and lotteries.[2]

2.2 Given the sizeable amount of funds being given, there is a legitimate interest in attempting to ensure that the non-profit organisations receiving these are genuine and manage received donations appropriately. The non-profit sector faces a tension between preventing the damage that a few "bad apples" can do to the sector and promoting transparency on the one hand, and keeping compliance costs down on the other[3].

2.3 Government regulation of fundraising organisations must strike a balance between protecting the public from fraudulent or incompetent fundraising and ensuring that compliance costs are not too burdensome for a sector that often relies upon volunteers for its workforce.

Regulation of Charitable Collections in the ACT

2.4 The *Charitable Collections Act 2003* and *Charitable Collections Regulation 2003* (the Collections Act) regulate charitable collections in the ACT. The objects of the Collections Act are:

(a) to promote proper management and administration of collections; and

(b) to ensure proper record-keeping and auditing of accounts for collections; and

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[2] Giving Australia: Research on Philanthropy in Australia, Commonwealth of Australia, 2005, p7

[3] Giving Australia, p46

(c) to ensure that the public has access to information about collections.[4]

2.5 The Collections Act establishes requirements for collections, penalties for offences, a licensing scheme for collections and requirements for how the proceeds of collections are to be handled. The Collections Regulation sets out collections exempt from the Act, requirements for the conduct of collections, some matters relating to the proceeds of collections, and the conditions for children taking part in collections.

2.6 The legislation covers various forms of collection including door to door, approaches in public places, and via telephone or internet. There are important exemptions, the most significant of which are collections expected to raise less than $15,000 in a calendar year, collections during church services and most school fundraising.

2.7 Any non-exempt collection must be licensed. The Collections Act states that licences may only be issued to collections with a charitable purpose.[5] Licensees are required to submit reports on collections carried out to the Chief Executive of the licensing agency at least annually. For collections that raise over $50,000 these reports must include audited accounts.

2.8 The Collections Act requires charitable collectors to display a badge or tag identifying the collector's name, the name of the charity, a description of the charity (if not clear from the name) and whether a collector is paid. Within five days of collection all collection money must be deposited into a bank account used solely for that purpose.

2.9 The Department of Urban Services (DUS), which became the Department of Territory and Municipal Services on 1 July 2006, issued guidelines for licensees to assist them in complying with legislative requirements.

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[4] Section 6.

[5] Collections Act, Section 23

Auditor-General's Findings

2.10 The Auditor-General found that while licence applications were approved in a timely manner, the licensing process does not provide confidence that a collection will comply with the Collections Act. While there were external guidelines for prospective licensees there were no guidelines and procedures in DUS for making the decision of whether or not to issue a licence. Regarding monitoring of the funds after collection the Auditor-General found that there was no monitoring of whether funds were deposited in bank accounts used solely for money received from collections and that most licences did not submit annual accounts to the licensing authority as required. The Auditor-General concluded that the monitoring regime did not provide the community with confidence that money donated is properly accounted for.[6]

2.11 The Auditor-General recommended that the licensing and monitoring of charitable collections be transferred to the Department of Justice and Community Safety (JACS) and that a risk analysis of charitable collections be undertaken. The preparation of formal guidelines for the licensing decision making process was also recommended.

2.12 The Auditor-General noted that the DUS guidelines included requirements that DUS was not actively monitoring or enforcing. The Report proposed that the guidelines should also cover collections under $15,000 as it was considered that this threshold was high and may increase the risk of improper use of collection funds.[7] The Auditor-General recommended that the $15,000 threshold be reviewed.

2.13 The Auditor-General found that neither the licence database nor public information about collections licences was accurate and up to date and recommended that they be updated.

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[6] Auditor-General's Report, p. 7.

[7] Auditor-General's Report, p. 9.

Response to the Auditor-General's Report

2.14 The ACT Government accepted all of the Auditor-General's recommendations on charitable collections. The Attorney-General agreed that the monitoring and complaints processes of charitable collections licences were seriously deficient.[8] The charitable collections function was transferred to the Office of Regulatory Services, a unit within JACS, from October 2006.[9] The Committee welcomes this move and believes the charitable collections process will be improved by being administered by an organisation that performs a number of similar functions. The Committee notes that the Office had intended to have completed a review all its regulatory functions[10] by now and looks forward to the results of that review.

2.15 Prior to this, DUS had completed administrative guidelines detailing the process for deciding whether a charitable collection meets the requirements of the Collections Act prior to issuing a licence.[11]

2.16 DUS completed a review of the $15,000 threshold for collections requiring a licence and concluded that lowering the threshold would significantly increase the resources required to process licence applications.[12] JACS also noted that the requirements to provide audited accounts could be a significant compliance cost for smaller collections.[13] The government agreed to update the charitable collections database and to ensure that the public record was consistent with it.[14]

2.17 The Office of Regulatory Services had only had the charitable collections function for around six months when officials appeared before the Committee. They noted that in that time they had received very few complaints about charitable collections.[15]

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[8] Transcript of Evidence, 9 May 2007, p. 3.
[9] Submission 2, ACT Government, p. 2.
[10] Transcript of Evidence, 9 May 2007, p. 4.
[11] Submission 2, ACT Government, p. 3.
[12] Submission 2, ACT Government, p. 3.
[13] Transcript of Evidence, 9 May 2007, p. 5.
[14] Submission 2, ACT Government, p. 4.
[15] Transcript of Evidence, 9 May 2007, p. 2.

2.18 In response to the Auditor-General's findings about the failure to monitor the disposal of funds, the Office of Regulatory Services has established a process of following up with organisations that failed to submit audited accounts. That process includes the possibility of the Office assisting the organisation to meet the requirements but also the possibility of pursuing prosecution of the organisation through the Director of Public Prosecutions.[16] A sample of audited accounts that are submitted will be assessed to ensure that they are in order.[17]

2.19 The Committee received a submission from the former Speaker of the Legislative Assembly, Mr Greg Cornwell, about the accountability of charities for the money they raise. The submission asserted that:

> Donors are entitled to a much more detailed explanation from charities for even a gold coin donation than an implied "Trust me" . . . there has to be some recognition on the part of charities they are as fully accountable to donors as they are to helping their clients".[18]

2.20 This idea was reinforced by statistics collected by the charities research body Givewell, which aims to "provide a comprehensive research service for informed giving"[19] Givewell records the results of a 1997 survey by research group ASSIRT where 60 per cent of respondents indicated that they would give more if there was "more information on charity efficiency" and 79 per cent of respondents would give more if there was "assurance that the money was going to the cause".

2.21 The Committee agrees that donors have expectations about the way in which charities should utilise donations. The promised efforts of the Office of Regulatory Services in regard to audited accounts are a useful contribution to transparency that government can make. The Committee is not convinced, however, that further government intervention is warranted.

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[16] Transcript of Evidence, 9 May 2007, p. 2.

[17] Transcript of Evidence, 9 May 2007, p. 3.

[18] Submission 3, pp. 2-3.

[19] From website < http://www.givewell.com.au/default.asp> accessed on 11 August 2008.

2.22 Charities operate in a modern environment and in a tight financial environment many now effectively compete with each for contributions. Charities must also compete with those marketing for non-charity related uses of funds eg household consumerism. Donors can choose how to distribute their funds and charities are aware that donor perception of their practices can influence future donations.

2.23 An example of this was Medecins sans Frontieres' decision to offer refunds to those who contributed to their tsunami appeal, after the charity raised four times more than their target. Donors were contacted and asked whether they would allow the money to be redirected to other work by the charity or would prefer a refund. This offer highlighted that some other charities had not offered refunds and were instead using excess tsunami donations to fund other works. This information was reported in the media and will have affected public perception of the charities involved. The Committee believes that this ongoing interaction and competition between charities will provide more effective incentives for greater transparency to donors than increasing potentially costly regulation. Individuals do have some responsibility to ensure that they are comfortable with the practices of an organisation they choose to donate to.

2.24 The Committee acknowledges the concerns donors may have about charities and believes that the lax monitoring situation under DUS was unacceptable. Without clear evidence of a significant problem with charity collections the Committee believes that the Office of Regulatory Services should be given an opportunity to apply better monitoring and a more disciplined approach to licensing before its processes are changed.

2.25 The Committee notes that the Office of Regulatory Services has been operating for over two years. The Office covers a wide range of regulatory matters including fair trading, WorkCover, parking and rental bonds. The Committee believes that, given the importance of process in this work, that an external audit of the Office's operations would be of benefit. The Committee believes it is also important to assess how well the Office's work is contributing to the goal of reducing the burden of regulation, the stated aim behind its creation.

RECOMMENDATION 1

2.26 **The Committee recommends that the Auditor-General undertakes a performance audit of the Office of Regulatory Affairs to assess the quality of its internal processes and how effectively it is contributing to the aim of reducing the burden of regulation.**

3 INCORPORATED ASSOCIATIONS

3.1 The *Associations Incorporation Act 1991*(the Associations Act) provides a method of establishing a legal entity that has the ability to function in its own right and provides protection for its members from the debts and liabilities of the association. The method is designed to be simple and inexpensive and is used by many sporting and community groups. There were 2431 incorporated associations in the ACT on 30 June 2005. The largest associations have over 100,000 members and $16 million in assets, although most are much smaller.

3.2 The Associations Act is administered by the Registrar-General's Office (RGO), which is now part of the Office of Regulatory Services. The RGO maintains the public record of incorporated associations. The RGO checks that incorporated associations submit annual returns, ensures proper disposal of assets upon winding up and requires that incorporation details are kept up to date. If an incorporated association fails to lodge an annual return for three years then processes to cancel the association's incorporation are begun. The RGO does not monitor incorporated society activities or investigate complaints as these matters are governed by the internal rules of an incorporated association. These rules are required by the Associations Act.

3.3 The Auditor-General concluded that the incorporation process is reasonably efficient and timely and that monitoring is meeting the requirements of the Associations Act. The Auditor-General recommended that the RGO develop and maintain a documented complaints process and that the RGO should conduct random checks of annual returns to ensure that they have been appropriately audited. The Government agreed with both these recommendations. The Auditor-General also recommended that the RGO follow up with larger organisations that fail to submit their annual returns more frequently. The Government agreed in part to this recommendation.

3.4 The Committee acknowledges that the focus of the Associations Act is on self-governance by associations with minimal external regulation. The Committee believes, however, that there is legitimate concern about the potential for poor governance and potentially corrupt activity, particularly in the larger, asset rich associations. While the Committee would not want to see onerous requirements placed on community organisations, incorporation does provide significant legal benefits and ensuring compliance with the requirements is not unreasonable.

3.5 As with the issue of charitable collections, some benefit may come from the RGO now being part of a wider organisation with a regulatory focus. Unlike the case with charitable collections, however, there are also concerns about the strength of the legislative provisions. The Committee believes that three years is too long a period for an incorporated association to fail to produce annual returns and remain incorporated.

RECOMMENDATION 2

3.6 **The Committee recommends that section 93 of the *Associations Incorporation Act 1991* be amended to allow the registrar general to begin the process to remove an association's incorporation if the association has not lodged an annual return with the registrar-general in relation to each of the last 2 years.**

3.7 The Committee notes the experience of one of the submitters to the Committee with an incorporated association that failed to produce annual returns until prompted by the RGO, and then produced returns that were heavily qualified by the auditor. There are reasons why an association may be unable to receive an unqualified audit that would not reflect upon the association's governance but would be related to technical auditing requirements. There are also occasions when a qualified audit is required due to poor governance that may conceal improper conduct. The primary avenue for addressing these concerns should be through the incorporated association's internal mechanisms. It would be useful, however, if repeated qualified audits were added as a reason for the RGO to request an incorporated association to show cause as to why its incorporation should not be removed.

RECOMMENDATION 3

3.8 **The Committee recommends that section 93 of the *Associations Incorporation Act 1991* be amended to allow the registrar-general to begin the process to remove an association's incorporation if the association has submitted three consecutive annual returns with** qualified audits and the reason for the qualified audit is not merely technical.

4 CONCLUSION

4.1 The Committee wishes to thank the organisations and individuals that participated in the inquiry.

4.2 The Committee has made three recommendations in relation to its inquiry into the Auditor-General's Report No. 1 of 2006: *Regulation of Charitable Collections and Incorporated Associations*.

Dr Deb Foskey MLA

Chair

14 August 2008

APPENDIX A: List of submissions

List of written submissions received by the Committee

No 1	Mr L. G. Stroud
No 2	ACT Government
No 3	Mr Greg Cornwell
No 3a	Mr Greg Cornwell, supplementary submission

APPENDIX B: List of witnesses

List of witnesses who appeared before the Committee at public hearings

Public hearing of Wednesday 9 May 2007

- Mr Simon Corbell MLA, Attorney-General
- Ms Renee Leon, Chief Executive, Department of Justice and Community Safety
- Mr Brett Phillips, Executive Director, Office of Regulatory Services
- Mr Laurence Graham Stroud
- Mr Greg Cornwell

Public hearing of Wednesday 12 September 2007

- Ms Tu Pham, Auditor-General
- Mr Rod Nicholas, Director, Performance Audits and Corporate Services, ACT Auditor-General's Office
- Ms Katinka Bradstreet, Senior Auditor, ACT Auditor-General's Office