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The Secretary
Standing Committee on Public Accounts

Submission Re: Inquiry into Auditor-General's Report No 4 of 2006

Purpose of this submission.

The purpose of this submission is to draw the attention of the ACT Government to my experience concerning the application of the Associations Incorporation Act. This suggests that the system is not working in the best interests of the community or, possibly, as was originally intended.

Background.

My involvement with the Act is a result of my connection with a national association which is a federation of State/Territory organisations. I would prefer not to name the organisation publicly lest there be undesirable consequences for the association nationally. I can, of course, provide this information in confidence to the Committee.

As a result of concerns at the national level about the operations of the ACT Association, I was asked to check with the Registrar-General to see if the ACT Association was meeting its obligations under the Act. In July last year I approached the Registrar-General's Office to ascertain if the Association had submitted returns in accordance with the legislation.

According to my information, the ACT Association was registered under the Act on 9 August, 2000 and held its inaugural general meeting on 14 October, 2000. Its stated intensions were to obtain funding from government for operational costs and research and to conduct fundraising to provide both operating and client service revenue.

When I initiated my inquiries in 2005 no returns had been filed. Other requirements of the Act (eg presentation of accounts to an AGM, list of activities of the Association during the year) were probably also ignored. It is assumed that the Registrar-General sent a reminder to the Association each year when its return was overdue (as indicated in para 3.18 of the Audit Report). If so, it would seem that the reminder was ignored.

Following my representations to the then Registrar-General, he wrote to the Association and eventually Annual Statements of Particulars were provided for the years ended 30 June 2002, 2003 and 2004. (I assume that a return was not filed in respect of 2000/01 as the Registrar-General probably only requested returns for the last three years which is what is required under the Act.)

The auditor's reports on these accounts were heavily qualified viz "Due to lack of appropriate documentation I was unable to determine whether the Financial Statements have been properly drawn up in accordance with the provisions of the Associations Incorporated Act 1991 "the Act" and so as to give a true and fair view..." In other words the return submitted could not be verified. Each of the auditor's reports was dated 6 September, 2005. It is surprising that the Registrar-General did not initiate action immediately on receipt of the highly qualified reports.

It was in response to my further approaches to the Registrar-General, that he wrote to the Association to seek an explanation. The Registrar-General advised me on 20 December, 2005 that an explanation had been received (the records had been stolen in a burglary but no police report details were provided). Accordingly he did not consider he had any "grounds for instituting any further inquiry into the Association's affairs at this stage". He indicated that the Association had informed him that new arrangements have been put in place to ensure greater integrity of its financial & accounting practices & records.

Subsequently I pointed out to the Registrar-General that the return for the financial year 2004/05 was now overdue and asked what action he proposed to take in this regard. It was agreed that a further letter would be written to the Association.

It is understood that the return for 2004/05 has not been submitted. Come 31 December, 2006 the return for 2005/06 will be overdue.

<u>Comment.</u>

From observations made by the Registrar-General it would appear that the Association, by submitting returns had "complied" with the legislation, and there was little he could do, despite the fact that the auditor's report basically said the financial statements could not be verified. (If this were so, an amendment to the legislation would be necessary to plug this loophole.)

It is contended that this response is inadequate. It provides no assurance to the public that the affairs of the Association are properly managed or that public donations are applied for the purpose for which they have been given. This can lead to a lack of confidence in community organisations and a reduction in public support.

I do not know why the Association was not at least asked to show cause why it should not be de-registered.

The "case study" outlined above suggests that, in the absence of my prodding, it is unlikely that any action would have been taken despite evidence of numerous failures to comply with the legislation. Hopefully this is an isolated incident.

Although I do not have access to the Second Reading Speech by the then Minister who introduced the Bill for the current Act, I would be surprised if he/she did not hold out greater promise for the legislation than suggested by the practical outcomes I have experienced. Certainly the community has a right to expect higher standards of compliance than has been set out above.

It may also be possible that the Association is also in breach of the Charitable Collections Act.

Recommendations.

Recommendations 6, 7 and 8 contained in the Auditor-General's report are supported. However it is considered that they do not go far enough to address the deficiencies outlined above.

Accordingly it is further recommended that:

(a) the legislation be strengthened to provide greater safeguards and penalties; and
(b) the Registrar-General be provided with stronger investigative powers and adequate resources to police the legislation.

(L G Stroud)
4 December 2006