



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON ECONOMICS

**Reference: Disclosure regimes for charities and not-for-profit organisations**

TUESDAY, 28 OCTOBER 2008

CANBERRA

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**SENATE STANDING COMMITTEE ON  
ECONOMICS**

**Tuesday, 28 October 2008**

**Members:** Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Bushby, Cameron, Furner, Joyce, Pratt and Xenophon

**Participating members:** Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Hogg, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Wortley

**Senators in attendance:** Senators Bushby, Cameron, Eggleston, Fierravanti-Wells, Hurley, Mason, Pratt and Stephens

**Terms of reference for the inquiry:**

To inquire into and report on:

- a. the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;
- b. models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises; and
- c. other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.

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**Committee met at 1.33 pm**

**CHAIR (Senator Hurley)**—I declare open the second hearing of the Senate Standing Committee on Economics in its inquiry into disclosure regimes for charities and not-for-profit organisations. On 18 June 2008 the Senate referred this issue to the committee for report by the last sitting day of November 2008. The reporting date has since been extended until 4 December 2008. The inquiry is examining the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations, models of regulation and legal forms that would improve the governance and management of charities and not-for-profit organisations and cater for emerging social enterprises, and other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance standards, accountability and transparency in its use of public and government funds.

In referring this matter to the economics committee the Senate noted two reports: firstly, a report by *Choice* magazine on charities, which highlighted the wide variability and inconsistency in the way charities disclose information to the public, and, secondly, the 2001 report of the inquiry into the definition of charities and related organisations. That report made 27 recommendations, including that the government seek the agreement of all state and territory governments to establish an independent administrative body for charities and related entities. The inquiry will consider the issues raised by these two reports in some detail, along with other matters reflected in the terms of reference.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[1.35 pm]

**LONG, Mrs Vicki, Manager, Executive Services, Royal District Nursing Service**

**ROMANIS, Mr Daniel, Chief Executive Officer, Royal District Nursing Service**

**CHAIR**—I welcome Mr Dan Romanis and Mrs Vicki Long, representing the alliance of community and residential care providers. Do you have any comments to make on the capacity in which you appear?

**Mr Romanis**—I am speaking today on behalf of the Royal District Nursing Service in Victoria and the other three members of the alliance: Silver Chain from Western Australia, Royal District Nursing Service from South Australia and Blue Care from Queensland.

**CHAIR**—I invite you to make an opening statement.

**Mr Romanis**—Thank you for the opportunity to present in support of our submission. Whilst I will be speaking to that submission briefly now, it is probably important to say that any comments in response to questions that may arise need to be attributed to the Royal District Nursing Service in Victoria rather than the other three members of the alliance, although they may represent the views of others who are part of that alliance. I understand that your inquiry will examine the relevance of current disclosure regimes, the models of regulation and legal forms to improve governance and management of charities and not-for-profit organisations, and other measures to assist in the governance transparency of such organisations.

Our submission has been read by you I am sure, so I will just provide a brief background of the alliance. We are four not-for-profit charitable organisations which for the last eight years have been working together with a focus on the community care needs of our society. We look for an outcome focus for our clients, and between us we care for about 200,000 clients each year. We provide almost five million hours of direct care to clients in our communities. We are responsible for over 5,000 residential beds, primarily in Queensland and Western Australia. We employ some 14,000 staff between us. We believe we are strongly supported by the communities that we serve. We certainly recognise the importance of the volunteer basis that supports us. Donations are important to us.

The key points of our submission I will summarise as being the complexity and the confusing nature of the legislation and incorporation nature of not-for-profit organisations across Australia. We would support the move to a single national regulator, which we believe should be a stand-alone entity and independent of government. We would look for a simple regulatory system. We would support some sense of proportionality in the requirements and the impact that would apply from such a single regulatory system. One of the submissions to the Victorian review of not-for-profits in 2007 spoke of a light regulatory touch. We believe that for many not-for-profit organisations we need to have something other than a one size fits all.

We believe that such a regulator could have a key role in education and development across the sector. As key players, our four organisations would support transparency and accountability

for the use of government and donated funds. We believe that many not-for-profit organisations currently demonstrate such transparency. A continuation of the benefits that charities currently receive, such as tax exemptions and so on, is important for us. We note, however, that compliance costs can be very significant and very onerous for us. A recent very topical example in Victoria is the change that will exist from the beginning of November regarding police checks. That is going to impose a very significant additional cost on the sector. Whilst we want a standardised approach to disclosure regimes for charities and not-for-profits, we are also cautious about potential new administrative burdens. Our submission refers to the risks and the costs that we see in the current complex environment, including diversion of resources from our core charitable functions.

Certainly there is a need for change—we do not question that. Our submission indicates that we are supportive of the majority of recommendations from the 2001 report of inquiry into the definition of charities and related organisations. There is one particular recommendation that we have some issue with. We believe that not-for-profits should be able to hold views that are at times contrary to or challenge public or government policy. In summary, we look to your inquiry to strengthen support for the not-for-profit sector, to make recommendations to improve transparency across the sector, to clarify responsibilities and reporting requirements, and to create some level of uniformity of incorporation.

**CHAIR**—You said donations were important to you. Can you give us a rough idea of what proportion of your income they would be?

**Mr Romanis**—It varies from organisation to organisation across the alliance. For my own organisation they amount to about two per cent of our total income, but they enable us to do things that our core income, which is about 80 per cent from the government, does not provide funding for. A good example for us would be some of the rather expensive wound care products that are being proven to have a significant impact in terms of length of stay for clients. If you can improve the rate of healing of wounds, you can discharge people from care a lot faster. Those products are not cheap though and donations enable us to purchase some of those products. Many of our clients could not possibly afford such products without some assistance from an organisation like ours.

**CHAIR**—You also mentioned volunteers. Do you in any way account for the amount of time or the value of their service?

**Mr Romanis**—We do not account for it in a straight accounting sense. The extent to which volunteers are used varies quite significantly across the four organisations in the alliance. I think Blue Care and Silver Chain would be much more reliant on volunteers than my own organisation, but my own organisation has certainly relied quite substantially at times on auxiliary groups to assist in local fundraising, in transporting clients, patients, to some our clinics and so on. For us in Victoria the use of volunteers is not as great as for some of the other members of the alliance.

**CHAIR**—Even if you do not formally account it, do you take note of the hours worked or in any way keep track of it?

**Mr Romanis**—We do not track the hours, no.

**CHAIR**—I want to explore the nature of the regulator you were talking about. You were saying that a regulator completely independent of the existing government bureaucracy would be your preferred model.

**Mr Romanis**—We certainly see some of the benefits that can come from a single and hopefully independent regulator. We operate in a sector that we believe is best served by a level of independence. Many of our organisations, certainly the four within the alliance, have fiercely protected their own independence over the years. So we would see some level of independence to be quite desirable as far as a regulator is concerned. There are lots of attributes of the UK Charity Commission that are beneficial. We can also see some aspects of that that some would suggest represent over-regulation, and that is something we would be concerned about with the direction that we might pursue. Our preference would be to have a level of independence— independent of government, independent of the tax office, independent of organisations like ASIC and so on, although there are certainly models that suggest that a regulator could be attached to many of those entities.

**CHAIR**—When you are talking about over-regulation, what exactly do you mean?

**Mr Romanis**—Many organisations within the not-for-profit sector are relatively small. They rely very heavily on volunteers, and I suppose we see the burden that could be attached if a one-size-fits-all approach was to be considered for those organisations. We think there needs to be some scalability of the regulatory environment that exists. Some organisations like my own have gone down the Corporations Law path and found that it is a very acceptable path to follow. Clearly for the local not-for-profit tennis club, an approach like that is not going to work, and that would represent, we believe, a level of over-regulation. So we think scalability is going to be very important.

**CHAIR**—Do you think it would be desirable for any regulator to have a function in assisting organisations to reach governance standards?

**Mr Romanis**—Yes. And the UK Charity Commission is a very good example of that. Some of the advisories that they publish are incredibly helpful to the sector, and that is certainly a role that we would see as being very important and a clear value-add to what exists today in what is a very confusing environment.

**CHAIR**—You have organisations that operate quite differently within your alliance. Because community organisations sometimes get quite a turnover of even paid staff, much less volunteer staff, there is often a disconnect between one way of doing things and another, and also a loss of information along the way. How would you see a regulator fitting in with that?

**Mr Romanis**—I am not sure how I can best answer your question. Organisations like mine and like all of the alliance members need to operate in a very business-like way; there is no question about that. We need to adopt and work within very sound business principles. At the same time we have a mission for our work, which is different. We have different drivers that sit behind why we exist and what we do. A regulator needs to recognise those differences. The stakeholders are different from the shareholders in the pure commercial world. We can certainly work within the ASIC principles and within Corporations Law, but is it the best way to go? I am not sure. It is the best way for us at this point in time but, were there to be a single regulator for

the whole sector, one would hope that the principles that we would need to follow would be fairly similar to those that we need to follow today. However, there needs to be a greater link between those principles and the principles that might apply to a much smaller, localised organisation that is totally reliant on volunteers.

**Senator FIERRAVANTI-WELLS**—What percentage of your time in your organisation would you say is taken up with meeting regulation requirements?

**Mr Romanis**—It is hard to put a precise figure on it. I will draw a parallel in terms of our direct legal compliance costs, but this would represent a change over time. I have been with the Royal District Nursing Service now for 14 years. Fourteen years ago our legal costs amounted to about \$20,000 a year in total for the whole organisation. Today we employ a full-time in-house solicitor. We benefit from pro bono budgets with two law firms of about \$70,000 a year, and our outsourced legal costs would probably amount close to another \$100,000 a year. So we have gone from an environment in which we were spending roughly \$20,000 a year on legal costs to one in which we are probably spending well in excess of \$200,000. A substantial proportion of that would relate to issues that, in some way or another, are linked to compliance.

**Senator FIERRAVANTI-WELLS**—Are you a company limited by guarantee?

**Mr Romanis**—Yes.

**Senator FIERRAVANTI-WELLS**—That is your corporate structure. Have you given any thought at all of a model in which you have a consolidation of charities under one umbrella group that distributes charity across the spectrum? I am not asking this because I am advocating it; I am asking it as a sort of complete opposite to what we have here in Australia. What are your thoughts on something like that?

**Mr Romanis**—It would be fair to say that there is active discussion within the sector. Within the health sector that we operate in there is certainly active discussion around those sorts of issues at this point in time. My personal view is that consolidation is both necessary and inevitable, and I think it is simply a matter of time. If we genuinely have the needs of our client groups at heart—and that is where we should be as organisations because we are there with a mission—then we need to streamline much of what we do back of office, as it were, and we need to look towards some form of merger, consolidation or whatever.

**Senator FIERRAVANTI-WELLS**—Would that be consolidation sector by sector or consolidation of the overall charity pool?

**Mr Romanis**—The charity direction is certainly one that we would see as being important, but sector by sector could equally occur. The reality is that we operate now in an environment in which much of what we do is almost in direct competition, or certainly sits very closely alongside of the for-profit sector. So, I am not sure that we necessarily see the same sort of boundaries today that we might have seen 10 or 20 years ago, but equally—and I know I would speak for all members of the alliance here—we see that holding the mission that we have as an organisation as absolutely imperative.

**Senator FIERRAVANTI-WELLS**—You have clearly been involved in the sector for many years. Over that time have you seen roughly how much of an increase—percentage-wise, if you are able to assist in that way—of charitable organisations has occurred in your sector, obviously competing for the same dollar in the same pool? How much growth have you seen over the time?

**Mr Romanis**—Within the health sector we have seen the growth of many brokerage organisations. That is an area that we are very conscious of as a sector. Indeed, there has been some recent publicity around that entire issue of growth of brokerage organisations. We have also seen competition within the sector—within the not-for-profit sector, let alone with the for-profit sector. I find it difficult to put a figure around exactly what has been the growth. I am not sure that the growth itself has been enormous, but the growth in the way that organisations are looking beyond their traditional boundaries is quite substantial now. For 120 years, my own organisation has confined itself to the greater Melbourne area. We no longer feel that sort of constraint and, indeed, we believe that it is essential that we look beyond what have been our traditional geographic boundaries and possibly beyond what have been our traditional service boundaries.

**CHAIR**—I think you mentioned at one point that the boundaries between yourself and the for-profit sector were not quite as clear as they had once been. That raises a significant point in your submission, about not being required to disclose sensitive commercial information. Would you like to expand on that?

**Mr Romanis**—Yes. We are great supporters of transparency and I believe our annual reports would certainly demonstrate that. Corporations Law requirements certainly require that compliance. But we are also very conscious that within that transparent environment there are issues of competitive advantage that we need to ensure are protected in just the same way that a for-profit provider would want to protect their own competitive advantage. That is where we are operating—almost at the fringe, right on the margin between the two sectors. So, we see transparency as a must, but we equally see the need to protect intellectual property and to protect whatever commercial advantages we might have as an organisation.

**CHAIR**—I assume, from what you said before, that you do not keep your donations in a separate pool and use them for discrete purpose. You use them wherever is necessary across the organisation.

**Mr Romanis**—Yes; but we are able to account for the use of those donations within the organisation's spend. They do not simply get tipped into a revenue bucket.

**CHAIR**—Okay. So if there were greater transparency required for donations, you would nevertheless be able to differentiate where those charity dollars went to.

**Mr Romanis**—Yes, absolutely. And I think that would probably be true for all members of the alliance.

**Senator MASON**—You mentioned that you were an advocate of transparency. I think we all are here. You also mentioned that you issue an annual report. Is that right?

**Mr Romanis**—Yes, that is correct.

**Senator MASON**—In your report do you disclose your funding cost ratio?

**Mr Romanis**—Yes.

**Senator MASON**—How much it actually costs in overheads and so forth to raise the money that you raise.

**Mr Romanis**—Yes, we do. Indeed, on, I think, at least an annual basis we put out a newsletter to our donors in which we also give facts as to exactly how donations have been used and what our costs have been against those donations.

**Senator MASON**—All right. And you would agree then that there should be some sort of standardised accountancy procedures across the sector. For example, administration or overhead costs are uniform, because what charities mean by ‘overheads’ or ‘administration’ can vary enormously. So you would agree that there should be something uniform.

**Mr Romanis**—Yes. We would have no issue with some level of uniformity there. I think organisations across the sector, depending on the nature of their incorporation, report in different ways. I do not think that that is helpful to the general public.

**Senator MASON**—It is hard to compare and contrast; isn't it?

**Mr Romanis**—Absolutely.

**Senator MASON**—Would you mind if you had to set out your objectives—as I am sure you do—and then keep performance indicators under there?

**Mr Romanis**—Yes. There is no issue and, in many ways, we do that.

**Senator MASON**—Already?

**Mr Romanis**—Yes.

**Senator MASON**—I have one last question. You mentioned in your evidence before, if I have it right, that charities should be able to hold views contrary to government or public policy.

**Mr Romanis**—Yes.

**Senator MASON**—I agree with that, and I suspect that all my colleagues would. But you do not think that that should be the primary purpose of a charity; do you?

**Mr Romanis**—Not at all, but I do believe it is important that at times we are able to advocate on issues that are, in some way, linked to our mission in ways that may not necessarily be at one with the government of the day.

**Senator STEPHENS**—Thank you very much for your submission. I was really pleased that you were able to get through some of the other submissions and pick out the key points that you agreed and disagreed with. You have spoken about your donors and the accountability that you have to your donors. Can you make any comment to the committee about how either your donors or donor behaviour has changed in the last decade or so?

**Mr Romanis**—I think we have become a lot more attuned to identifying the needs of our donors and have recognised that we have to demonstrate much more clearly to our donors exactly how their donations are being used and the way in which they are making a difference in people's lives. Things like donor newsletters did not exist for us 10 years ago—they probably did not exist even five years ago—whereas now they are an accepted part of the way that we work. There are a whole raft of issues concerning regular contact with donors and ways of recognising donor inputs to the organisation. From a donor perspective, I think there is a growing level of discernment about exactly what difference their contributions are going to make, so we need to be responsive to that. We are certainly going through a tough period now as far as donors are concerned, and we have seen some substantial impact over the last 12 months in terms of donations to the organisation. Some of those directions are quite concerning, but hopefully that will be a short-lived issue.

**Senator STEPHENS**—Have you been actively constructing partnerships that have a corporate partner supporting the alliance?

**Mr Romanis**—Yes,

**Senator STEPHENS**—Perhaps you could tell us how that fits into what you are doing.

**Mr Romanis**—As organisations we have been doing so. I could cite a number of examples of that. But the one that I will particularly pick out would be with the RACV in Victoria. We are now into the fourth year of a strategic partnership with that organisation. There are many synergies between what the RACV provides in Victoria and what Royal District Nursing Service provides. In terms of the depth of that relationship, which is a valuable one from our perspective, several times a year we host RACV staff who come along and provide volunteer input—for example, packing Christmas cards with our staff and so on. It is their corporate contribution back to a charitable organisation. We work alongside the RACV at times like Australia Day and we provide free blood pressure checks and so on at the RACV presentation in Melbourne. That is one example of a corporate partnership. There are a number of others that I could cite but that is probably the one that is easiest to explain. We see that as being really important. It is a long-term relationship development for us.

**Senator STEPHENS**—I have one final question. Several submissions have taken up the UK model of creating an entity with the purpose of an organisation being created in that new model or new framework as a community interest company or something to find a new way of regulation. I wonder whether you have any thoughts about that, given your comments about simplification of incorporation. We are all attuned to the fact that the risk and the compliance burden need to be commensurate with the size of the organisation. Do you think that is a model that might work?

**Mr Romanis**—My comment would be that the devil is going to be in the detail. I do not feel I could effectively comment on how you would transition from the current complexity of arrangements into something new and how you would manage the establishment of new entities both during that transition and post transition, because it will be in the detail. But certainly I think the establishment of some new regulatory form needs to be one in which the creation of new entities within very clear, very simple guidelines has got some opportunities. But I fear I have not answered your question effectively.

**Senator STEPHENS**—I did not want a yes or no. In fact, your final point is a very important one. Organisations are evolving all the time so we would not want to be trying to set up some kind of framework or some kind of entity that precluded organisations from evolving further into something else.

**Mr Romanis**—Absolutely.

**Senator STEPHENS**—It is an important point.

**CHAIR**—Thank you, Mr Romanis and Ms Long for coming in this afternoon.

[2.04 pm]

**OGLE, Dr Greg, National Legal Coordinator, The Wilderness Society Inc.**

**CHAIR**—Welcome. Would you like to give an opening statement to your submission?

**Dr Ogle**—Yes, I would. Thank you for the opportunity to hear me today. The Wilderness Society is one of Australia's largest environment advocacy organisations. We have put in a submission based on our standpoint and recent experience, but today I would like to focus on just two issues rather than going through the submission point by point. The first one concerns the electoral disclosure laws, partly because from my perusal of the other submissions I think we were the only ones that raised this issue. I would put to the committee that this might suggest that there is a substantial area of non-compliance across the sector. I will then talk a bit about the overall approach that we would see as being appropriate.

I have just asked for two leaflets to be handed around to members of the committee, which relate to the electoral disclosure provisions. One is a summary of an Australian National University research report on green carbon. This is a four-page Wilderness Society summary that basically says, 'There has been this research done over 20 years that now shows that the amount of carbon stored in old-growth forests is much more than we previously thought—on average about three times more than we thought but in some particular forests it is many more times than we thought was there.' The implication that flows from it is that, when we knock down these forests, we lose that carbon storage. The implication of the research is that we just never get that back, and then that has a policy implication in terms of climate change policy and forest management policy. Obviously, we would argue it is another reason why we should be protecting our old-growth forests.

The four-page document is a simple summary of the ANU research. The question here in terms of electoral disclosure is: was the \$6,000 or \$8,000 that we spent printing that leaflet an electoral expenditure that needed to be declared under the Australian Electoral Act? Is it an issue in an election under section 314AEB(1)(ii) or an electoral matter under the next subparagraph? Part of that depends on a completely unclear—to me anyway—question about what the issue is here. Is the issue in that leaflet climate change? Is it carbon and carbon trading and natural sequestration? Is it how we calculate carbon sequestration? Is it forest management and the need to protect forests? In a sense, it is about all those things, but how do we define which one of those will be an issue in an election? We can probably guess climate change will be an issue and carbon trading may be an issue. We can probably guess that the nuances of how we calculate the amount of carbon in a forest will not be an issue in an election—but who knows?

We have elections all around the country. When we have by-elections, we do not know when they will be called in any calendar year to know whether there will be issues in them. But our understanding of the current disclosure regime is that, if we produce that leaflet, say, in July this year, we need to make a decision as to whether that is going to be counted as electoral expenditure in July next year when we are looking at filling out the annual return. Then we have to make another assessment about whether it was or is going to be an issue in an election.

This gets more complicated when you look at the postcard that I have also distributed to the committee. In some ways it is supplementary to the leaflet and added to the costs. The printing costs for both would have taken us over the current \$10,000 threshold. Again, the question is: is it an issue in an election? The same considerations as the leaflet apply to the postcard, but the name of the Prime Minister is mentioned on the front of it. So one could assume that it is an electoral matter under section 4(9) of the Electoral Act and therefore require authorisation, although I note that the person who produced it does not agree with me. But if it does require authorisation because it refers to the Prime Minister then it requires disclosure under the Electoral Act. But it seems to me that the postcard is not really what is intended to be caught by the provisions of the act. The postcard is aimed at raising awareness and is a call for action in relation to carbon storage and climate change, yet it seems to me that, from the reading of the act, we should be declaring that expenditure and therefore, in a sense, we have to create a whole separate set of accounts on things that may turn up as an election issue. I think this is an area that needs to be looked at.

There is a recommendation in our submission that the law needs to be redrafted. Any moves to lower the threshold should be done in conjunction with being much clearer about what it is we need to be declaring and what is meant to be caught under this regime, because electoral disclosure is important. It is important to be clear about who is spending what on election related issues. If we are making one set of judgements about what should be caught as an electoral issue and other people are making other sets of judgements, we do not have the transparency that the law requires and that we would support. That is all I will say about electoral disclosure. Again, I note that we were probably the only group to do this, and that either means that we are wasting a lot of our time in what we believe is following the act or other organisations are not disclosing.

The overall approach to not-for-profit regulation is the second issue I want to talk about today. The Wilderness Society was built by volunteers. We now have substantial staff and a substantial income. When I was writing some of the submission I was thinking not so much with the Wilderness Society hat on but about a lot of the smaller groups that we come into contact with and deal with. Whether it is the friends of this bit of bush—who spend their life weeding it or replanting a paddock next to it or lobbying or campaigning to stop a development next to it that will take its water or whatever—a lot of the groups we deal with on the ground, day to day, are 20 people, 20 volunteers, and that is how they spend their weekend. I think the previous speaker raised the example of the local tennis club. So in every sector there are examples of people just coming together spontaneously, informally, and I think it is imperative to allow that to happen.

Any recommendations need to take account of that and not overbureaucratise. Nor should they, in a sense, scare people with the requirements of directors under the Corporations Act—things that are quite onerous and unnecessary for the scale of operations of many not-for-profit organisations. Our submission fully supports having a nuanced scale about the sort of regulation that is involved. The Wilderness Society, as a large national organisation, would accept that we have a much greater responsibility and are happy with greater regulation and scrutiny than would be appropriate for small local environment groups.

Following on from wanting to allow the sector to flourish and be free of unnecessary regulation or overregulation, if the direction is to create a UK style charities commission, we are not against that. But maybe the first step is just to try to harmonise more of the existing laws. The difference in laws across states for an organisation like ours, in fundraising particularly, is a

problem. But, for us the problem is the harmonising of laws rather than the need for an overarching regulator.

I have made some comments about the political context for us in relation to disclosure and regulation over the last few years. If there were a regulator set up, we would want to see that they were at arm's length from ministerial control. Obviously the parliament has the mandate to establish a commission and the rules of what is required. But the sort of day-to-day interference and pressure that we perceived in some of the tax department's inquiries over the last few years were, at the end of the day, costly to the tax department in terms of time and resources, and to the environment sector.

Following on from that, a lot of the audits that I refer to in the submission were around what was then an unclear definition of charities. Since then the tax department ruling has come out and given much clearer guidelines. This has certainly been useful for the Wilderness Society in terms of determining where we draw our lines, because prior to that ruling it was pretty unclear. I am hoping that debate has passed and that we can talk much more about how to support the sector rather than how to regulate it.

**CHAIR**—Thank you Dr Ogle. In your submission you talk about the interaction between fundraising and your core programs, and that this may be a problem in terms of transparency issues. I am not quite clear why you see that as such a problem.

**Dr Ogle**—It is not necessarily a problem if the transparency provisions are sufficiently new; then it is probably fine. If it is at a simple level of spending a third of your budget on fundraising and only a third on projects, for whatever the purpose of the organisation, then that looks really bad. But that fundraising may be integral to and integrated into whatever particular projects you are running. In our case, I use the example of our Wilderness Defender project. We have people who talk to up to a million people a year about environmental issues. That is a core outreach of ours—environmental education and information sharing. It is also fundraising, as we try and sign some people up. To simply dump that and say, 'Well, all that amount is spent getting donations,' overlooks how integrated that is to the mission of the Wilderness Society, which is the education information mission. If there are categories that can recognise that, that is fine. If it is simply about the costs of fundraising and how much you spend at some pointy-end delivery, then I think that misses something and would discourage the integration of fundraising.

**CHAIR**—So, basically it is about the definition of what constitutes administration programs, et cetera.

**Dr Ogle**—Yes. Every major not-for-profit organisation should be accountable to its members and the people giving it money in terms of what it is doing with that money, and if we can get consistency across the sector and guidelines, then we would be relaxed about that, but it has to reflect the reality that these are not separate things. That is quite different from if we were just running a commercial business that had nothing to do with our core business. That may be just a cost of fundraising, but this is quite different and I would like to see that reflected in any new regime.

**Senator BUSHBY**—Thank you, Mr Ogle, for your submission. You mentioned that the Wilderness Society grew out of a small volunteer organisation that has grown to include salaried

people with substantial income. The Australian Business Register lists a number of different entities, such as state branches, local branches and the like, with the name 'the Wilderness Society'. It is all a bit confusing.

**Dr Ogle**—Even for us.

**Senator BUSHBY**—Can you explain to me the structure of the Wilderness Society?

**Dr Ogle**—I work for the Wilderness Society Incorporated, which is the national organisation, but there are also separate wilderness societies in each state, so they are state entities. They are incorporated under different acts and are independent. We all cooperate together under the auspices of a peak body, which is the Wilderness Society Australia. That is a sort of meeting place for all the wilderness societies. In a sense, if you thought about government departments, the Wilderness Society Inc. is the federal government bureaucracy, the states are the state government bureaucracies and then we have a combined meeting space which is, in a sense, like COAG or something like that. Each of those different entities is run by its own management committee and that reflects the history of the Wilderness Society's commitment to grassroots membership engagement. It is much easier for volunteers to engage at a state level where they can actually turn up to a campaign centre and be involved than have to go to or sit on a national committee which is dealing with stuff quite distant from why they actually got involved, so it is complex but it is an attempt to reflect our commitment to membership.

**Senator BUSHBY**—Do they all maintain their own financial arrangements?

**Dr Ogle**—It depends on what you mean by financial arrangements. Obviously they are their own legal entities with their own books and their own separate fundraising programs. But there is also a substantial funding flow from the Wilderness Society, which makes grants to those organisations because we—the Wilderness Society Inc.—are the primary fundraising vehicle as the national organisation.

**Senator BUSHBY**—And that is who you are representing today.

**Dr Ogle**—Yes.

**Senator BUSHBY**—So most of the funds that are raised under the heading of the Wilderness Society, in terms of the family, come through the Wilderness Society Inc. and then you distribute it to the various Wilderness Society family members in accordance with their needs, effectively.

**Dr Ogle**—At this stage of our history, yes. That has not always been the case. Probably 10 years ago most of the money was raised through shops and that was raised by the local entities, so the technology of fundraising has changed over the last 10 or 15 years. It may change again but at the moment that is certainly the case.

**Senator BUSHBY**—Does that go through the wilderness fund? Is that how that is effected?

**Dr Ogle**—Yes, by and large. The bequest program does not go through the wilderness fund, but certainly the bulk of membership donations—people who give monthly to us by direct debit; so whatever goes into the wilderness fund—is directed by the directors of that fund out.

**Senator BUSHBY**—What about the campaign priorities of your member wilderness societies? How do they interrelate with the money you give? Do they make their own decisions about what they are going to focus on in terms of achieving the purposes of the Wilderness Society and then come to you and ask for the money, or do you have some say as to which campaigns they might be looking at running?

**Dr Ogle**—The formal agreements between TWS Inc. as the national entity and the various states are clear that the states have autonomy over state based issues. Where issues go across state borders or there is national significance in them, there is a negotiated process. Sometimes that is at a detailed planning level, sometimes it is just at the level of, ‘Here’s our particular view on the matter’, and then there is core funding for the organisations. We would cooperate and often seek donations or major donor stuff possibly jointly. So the short answer is that it varies.

**Senator BUSHBY**—This might be a difficult question, given what you have described about the make-up of the wilderness societies, but how many members does the Wilderness Society have?

**Dr Ogle**—At a national level, I cannot give you an exact figure. I think it is around 50,000.

**Senator BUSHBY**—That is through all the Wilderness Society family members and the Wilderness Society Inc. as well?

**Dr Ogle**—Yes. The bulk of those would have been signed up over the last five or six years through the Wilderness Defender Program. As I said in the submission, it has been a very successful outreach in getting membership and all those members have been recruited to the Wilderness Society Inc. as the national body and of late we are recruiting to both that and the local body, but certainly Wilderness Society Inc.—the national organisation—is by far the biggest in terms of membership.

**Senator BUSHBY**—So you can be a member of the national organisation or you can be a member of the Tasmanian Wilderness Society, or the Newcastle branch. If you are a member of one, are you a member of the other?

**Dr Ogle**—Not necessarily. It would depend on how you signed up because, obviously, we cannot decree members to be members of different organisations. Currently you sign a form and you would a member of both TWS Newcastle and TWS Inc.

**Senator BUSHBY**—Are there any different subclasses of members or are there different levels of membership? For example, Greenpeace makes a distinction between supporters and members. Do you have a similar sort of distinction?

**Dr Ogle**—No. That is one of the things that distinguish the Wilderness Society’s membership structure from a lot of the other groups in the not-for-profit sector, and again partly our commitment to grassroots engagement is that if you join up, you are a full-voting-rights member. There are no subcategories. We have a database of supporters who may sign a postcard or whatever, but once you sign up you are a full member.

**Senator BUSHBY**—So your 50,000-odd members all have full voting rights and the ability to participate at an equal level?

**Dr Ogle**—Yes.

**Senator BUSHBY**—That is good. Are there any preconditions for membership? Can anybody turn up and join, given that you have voting rights? There are some organisations that would be concerned. For example, the CFMEU might come in and take over and try and outvote you or something like that. Do you have any thresholds or ways that you can sort out who might become a member and who might not?

**Dr Ogle**—No. We found—in a sense, to our embarrassment, but it was fine—that Forestry Tasmania had been a member of the Wilderness Society through their library for quite some time. When we sent them a renewal letter asking them to continue their commitment to us, they put it up on the website and had a shot at us. Full points to them. But we do not vet the membership at that level. Our Wilderness Defender campaigners talk to people on street corners and at public fairs and explain what we do and ask them to sign up. If they do, they are members.

**Senator BUSHBY**—There has been a lot of discussion recently about executive level salaries. Given that, in general, the not-for-profit sector of the economy is far less regulated than elsewhere—ignoring areas like age care, which are highly over-regulated—yet represents probably about 10 per cent of Australia's GDP, do you believe that top management of an NGO, like those in business and in government, should have to disclose their remuneration?

**Dr Ogle**—I do not think we have a position on that. I think the temptation from the Wilderness Society might be that if that were disclosed we might get paid more money.

**Senator BUSHBY**—Would you care to offer how much you are paid? If you do not want to, that is fine.

**Dr Ogle**—There is competition between all NGOs for staff with suitable experience. That is no different from the business world. We have certainly increased our wages over the last period to try to get and retain the staff that we have because we view them as being some of the best environmentalists in the country. At that level, public disclosure would make it easier but I do not think we have a clear position on it.

**Senator BUSHBY**—There are a lot of questions I would like to ask but we are going to run out of time so I will have to miss a few. Do volunteers play much of a role in the Wilderness Society?

**Dr Ogle**—To be honest, not as much as they used to because the organisation has become increasingly professionalised. It used to be run entirely by volunteers when it started and for the first years of its life in the 1980s. We still have volunteer management committees in each state for each of those entities you referred to. There is a volunteer management committee and there are volunteer activists in most of the campaign centres. I guess the difference is that the campaign centre office space and the lead campaign are maintained by professional staff, but they are still answerable to a volunteer management committee.

**Senator BUSHBY**—So you do not have as many volunteers now. Is that because you pay people to do the things that volunteers once would have done?

**Dr Ogle**—Yes. I think there are a number of reasons for that. At one level we have employed a lot of the people who were volunteering. Like many organisations, you get some money in and you give it to the people who have been slogging away for the last number of years in order to keep them there, and because they have needs and family to feed et cetera. I think the volunteer environment generally has become more difficult over the years, and not always for bad reasons. Relatively full employment over the last decade or so has meant that people are busy and they have less time.

**Senator BUSHBY**—Does the Wilderness Society fund groups outside the Wilderness Society family group or provide funding for other groups?

**Dr Ogle**—Very rarely. We have certainly funded grants to the ANU for research. We have a small grants program through our WildCountry Program, where people can apply for grants in a sort of externalised process. It would be very rare for the Wilderness Society just to hand money to another group.

**Senator BUSHBY**—Are you talking about the Wilderness Society Inc. or the Wilderness Society in general?

**Dr Ogle**—In general, I would think. Usually there is not much funding to go around that we can give it away.

**Senator BUSHBY**—I am representing my home state of Tasmania. Has the Wilderness Society has ever provided any funding to the Huon Valley Environment Centre, to the best of your knowledge?

**Dr Ogle**—Chair, I have a problem with that given that it is actually an allegation in a court case against us.

**CHAIR**—Yes. I do not know that it is strictly relevant to our inquiry.

**Senator BUSHBY**—I will move on then. In the Hobart *Mercury* on 25 July 2007 it was reported that the Wilderness Society had commenced investigations into whether an employee had sent an email on their Wilderness Society email account, which you would be aware of. Has the investigation been completed and what were the findings?

**Senator CAMERON**—Is that relevant to our inquiry?

**CHAIR**—I will leave it up to you, Dr Ogle, whether or not you wish to answer it.

**Senator BUSHBY**—It is relevant to the transparency and accountability of the not-for-profit sector.

**CHAIR**—We are looking into the transparency and accountability of the sector, not the Wilderness Society as such.

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**Senator BUSHBY**—I could argue this point. The Wilderness Society is not for profit and receives tax deductibility on the basis—

**Dr Ogle**—I am happy to answer that because I was closely involved in it. We conducted an inquiry. There was a personal use of company email, to use those terms. The employee was given a formal reprimand and a warning as a result of that. We were contacted by the Australian Taxation Office and asked to explain. We showed them the result of our inquiry, the correspondence and the warning letter and they seemed to be happy with that.

**Senator BUSHBY**—Given that it was in the public arena, did you put out a media release or anything to indicate the results of the investigation?

**Dr Ogle**—No.

**CHAIR**—Senator Mason, do you have questions?

**Senator MASON**—I am happy to yield to Senator Bushby.

**CHAIR**—In that case, Senator Pratt.

**Senator MASON**—I will go after Senator Pratt then.

**Senator PRATT**—Your submission talks about some issues with tax office decisions regarding charity status and debates about the political nature of some environmental activities. Could you highlight how the Wilderness Society has been affected by those debates in terms of tax deductibility for your activities?

**Dr Ogle**—Obviously, we seek to comply with the tax laws. We did not have a problem with the ATO coming in. We cooperated, and I have quoted the relevant section from their letter of findings to us. Obviously, there was the amount of work that was involved just in them doing a thorough audit, so there was that individual block of work. I think the greater issue that is broader for a lot of the not-for-profit sector is simply that the rules were not, at the time, clear about how you might define the boundaries of ‘charitable activity’.

**Senator PRATT**—How do you currently define them internally as a result of that? Can you tax deduct for advocacy, as opposed to environmental activities?

**Dr Ogle**—All our advocacy is based on our environmental purpose. As long as what we are doing is pursuant to that environmental purpose, which it is, then that is our tax ruling 21 of 2005.

**Senator PRATT**—I think you said in your opening statement that you were reasonably comfortable with where those issues had evolved, but it has been put to me that there are some advocacy organisations, such as human rights organisations, that also undertake campaign work and who are not able to gain charitable status to tax deduct their activities. However, environmental organisations are able to and I fully support that in the same way that religious organisations seem to be able to tax deduct for advocacy because they have other charitable works. They are very much values based campaigns, and that is a worthy thing to pursue, but I

am not sure that we do, yet, have the kind of clarity that we need on those issues. Do you have any comment to make with regard to that?

**Dr Ogle**—My comments around ‘we have clarity’ is that, certainly from having complete mud and no clarity, the tax ruling was very useful for us to be able to use that as a touchstone. We have certainly used that.

**Senator PRATT**—For your own activities.

**Dr Ogle**—If you go back to what is the charitable purpose—it is actually something that is not for private benefit but for public purpose—then philosophically and personally I would say that political debate, in the way we have it in a democratic country, is of public benefit, and the evidence for that is in all the countries that do not have it. In that sense, I would probably prefer a broader approach. However, focusing again on environmental stuff, if planting trees is for public benefit and therefore is a charitable purpose, then surely stopping them from being knocked down is a public benefit. It just does not make sense otherwise. Maybe there is not the same quid pro quo for human rights organisations, or maybe it is simply that we have failed to note that civil rights are a public benefit to have, not just to lament when we lose them.

**Senator CAMERON**—I have just had a look at your website and at the UK Charity Commission’s website. You have some concerns about that UK Charity Commission approach. I must say that your website provides far more financial details than the UK Charity Commission approach. They do a broad based analysis of what they are doing. What would be your problem about the public having quick access to a UK Charity Commission type of analysis, instead of having to dig through your annual report, which is on your website and is there for public scrutiny? What would be the problem with the other approach?

**Dr Ogle**—As I said, we do not have a problem with transparency, obviously. Thank you for picking up that it is on our website; we are happy with being transparent. My concern is less for TWS Inc. than for the many groups that we come into contact with—the 20, 30 and 40 people and the requirements that that might lead to—and just whether it is the most efficient way. It is not a philosophical objection. I just question whether it is the most efficient. If the committee thinks that it is and recommends that, then we do not have a big drama about it. The only thing we would then say is that we would want it at arms length from political and ministerial control. We would want a sort of independent commission.

**CHAIR**—Thank you, Dr Ogle.

**Senator MASON**—I have some questions, too.

**CHAIR**—We are running well over time, I am afraid.

**Senator MASON**—I will be very quick.

**CHAIR**—Perhaps Dr Ogle would be prepared to take questions on notice, we might deal with it that way.

**Dr Ogle**—Yes.

**Senator EGGLESTON**—Senator Mason did indicate that he had some questions.

**Senator STEPHENS**—Dr Ogle, some submissions have been proposing that we use an existing threshold, such as the GST, so that organisations that are already in the GST system become part of a regulatory regime, and then there are those who fall below that threshold. Do you think that that would be a useful measure?

**Dr Ogle**—I confess that I am not sure what the GST thresholds are.

**Senator STEPHENS**—I think it is about \$75,000.

**Dr Ogle**—It might be. The South Australian act has \$200,000 as the threshold.

**Senator STEPHENS**—So it is inconsistent.

**Dr Ogle**—Yes. There are different thresholds for different things. Arguably, one harmonised set of thresholds would be good, but basically the key point is that there are thresholds.

**Senator MASON**—Thank you, Madam Chair. I will be quick. Dr Ogle, you mentioned in your opening comments that the Wilderness Society was one of Australia's largest environmental advocacy organisations. I think that is what you said. As Senator Pratt raised before, when you hear the word 'advocacy' and you do not hear about 'planting trees', to use your words, then people start to question whether you spend all your time lobbying politicians or whether you actually go out and plant trees? You can see why this committee is interested in the activities of your group and many others. I will not go there because we do not have the time, but I might quickly say, in relation to political debate, that maybe you are right that that is a public good, but if that were the case, all political parties would also want to have a tax exempt status, and we do not have that yet; do we? All sides do not have that. I just thought I would throw that into the mix. Anyway, let me ask you a question.

Senator Cameron mentioned the Wilderness Society's website, and I have many questions but I will leave it at just one, which perhaps follows from Senator Cameron's observations, and your observations, Dr Ogle, that the law was not clear in relation to political activities. For my sins, I have been around politics for a few years now and I remember at the 2001 Queensland state election campaign that the Wilderness Society ran, in conjunction with the Queensland Conservation Council, a campaign which targeted five marginal seats, the object of which was to 'move Liberal voters concerned with the environment to Labor.' This was done with newspaper and television advertising, 40,000 letterbox how-to-vote cards, direct mail to 6,000 people, a mobile billboard and 150 members and volunteers helping the Queensland Greens to hand out how-to-vote cards. Given what you now know, would you seek to repeat that sort of activity?

**Senator PRATT**—Are you going to prevent church groups from handing out how-to-vote cards?

**Senator MASON**—That is a very fair question; it is right within the terms of reference. It is a fair question.

**Dr Ogle**—Our approach has changed in line with the tax rulings.

**Senator MASON**—So you would not do that anymore?

**Dr Ogle**—It depends on what you mean by that. You read a very long statement which included activities which—

**Senator MASON**—Would you have newspaper and television advertising? Would you distribute 40,000 letterbox how-to-vote cards? Would you direct mail to 6,000 people? Would you have a mobile billboard? And would you directly assist the Queensland Greens in a campaign to hand out how-to-vote cards?

**Senator STEPHENS**—That is a hypothetical question, Chair.

**CHAIR**—I think Dr Ogle did indicate in his answer that he would do it according to the guidelines as they are now.

**Senator MASON**—So that behaviour would no longer be tolerated? I want to know what your understanding of the guidelines is, Dr Ogle. It is a fair question.

**CHAIR**—I repeat that this is not about questioning the Wilderness Society on their activities. We asked the Wilderness Society to come in to talk about governance and taxation of the sector.

**Senator MASON**—This falls directly to their charitable purpose. It is directly within the terms of reference.

**Senator STEPHENS**—That is not within the terms of reference.

**CHAIR**—I think Dr Ogle has answered and I also think we are running very short of time.

**Senator MASON**—It is a fair question. I would be a bit embarrassed if this committee did not get a response.

**CHAIR**—It is a fair question and I think Dr Ogle has answered it.

**Senator MASON**—I do not think so.

**Senator FIERRAVANTI-WELLS**—As a point of clarification, as I understand, the Wilderness Society is listed on the Register of Environmental Organisations and it receives tax deductibility for donations. A condition of this entitlement is that they do not support or fundraise for a political party.

**Senator MASON**—That is right. That is why I asked the question.

**Senator FIERRAVANTI-WELLS**—So it falls directly and squarely into charitable, not-for-profit and their activities. The Wilderness Society has a long history—

**CHAIR**—And I think Dr Ogle has answered the question.

**Senator MASON**—I want a yes or no, Dr Ogle.

**CHAIR**—He has answered the question, I think, very clearly.

**Senator MASON**—I have not heard the answer. Maybe I am deaf.

**CHAIR**—I will repeat it for you, Senator Mason. Dr Ogle said that they operate within the current guidelines.

**Senator MASON**—Right. So you would not do it then, Dr Ogle. Thank God for that.

**CHAIR**—I think he has answered that question. Thank you, Dr Ogle, for your evidence to the inquiry. I will now call the aged care sector, the Aged and Community Services Australia.

[2.43 pm]

**BECSI, Mr Stephen, Alternate Director WA, Aged Care Association Australia**

**McKENZIE, Mr Bruce, Aged Care Association Australia**

**MUNDY, Mr Gregory Philip, CEO, Aged and Community Services Australia**

**CHAIR**—Welcome, gentlemen. Do you have an opening submission?

**Mr Mundy**—We probably have prepared three separate submissions. Would you like each of us to do a very brief opening statement before questions?

**CHAIR**—Yes. Could you do it briefly, please?

**Mr Mundy**—Is it your plan to catch up on time or do we still have half an hour?

**CHAIR**—You still have half an hour, but not for the opening statement, I should add.

**Mr Mundy**—I will be very brief. Aged and Community Services Australia is the national peak body for not-for-profit aged care providers. Our members range from the very largest organisations providing aged care in Australia with budgets of hundreds of millions of dollars down to small, mainly volunteer based organisations, but which still with an annual turnover measured in tens of thousands of dollars rather than at the very small end of the charitable spectrum. The Royal District Nursing Service, by way of example, is one of our larger members in Victoria.

I would endorse one of the comments made by the previous witness, from the Wilderness Society. The question about whether you can clearly identify a ratio or a margin or a figure that represents fundraising activity would be quite difficult to calculate across the broad, diverse range of our members for a couple of reasons. One is that it is actually quite difficult to distinguish sometimes between what is fundraising activity and what is community development activity of a different character. I use the example of wilderness preservation type activities. There will be a lot of things that our members do that have multiple purposes, such as community development, support of residents and community care clients and a fundraising component at the same time. So reducing it to a simple ratio would be a difficult calculation.

I do sometimes think that people ask for a simple figure and assume that any money that you spend on overhead costs is a bad thing. In terms of organisational succession and robustness and continuity through the sorts of management changes that you asked a question about before, I actually do not think that is the case. I think organisations should train their staff. I think they should provide for succession. I think they should insure their workers. I think there is a legitimate component of overhead cost. It should not be assumed that all overheads are, by definition, a bad thing.

There has been a bit of a critique of the charitable sector from a level playing field perspective which we certainly do not support. We think the fundamental test of any change in the reporting regime of the whole third sector, be they charities or other NGOs, should be to ask whether it strengthens and enhances the sector or does something different. We have identified five key questions for any reform in this area. One is that we believe reform should be based on recognition of the intrinsic value of not-for-profits and charities. Again, this echoes comments previous witnesses have made. Any new disclosure of requirements should be in proportion to the scale of the organisation. What is appropriate for a multi-hundred-million-dollar organisation is not appropriate for one that is spending a mere \$10,000 a year.

We think that we should, wherever possible, rely on existing reporting requirements and accounting standards for which there is a national infrastructure of service and support, rather than inventing new ones, wherever that is possible. If you create a new specialist class of reporting requirements, the very next thing that will happen is that you will have a new specialist class of accountants charging new specialist classes of fees to audit the books of such organisations and you will have actually increased the overhead costs of organisations inadvertently in pursuit of that other goal. The generic accounting standards have been tried and tested. They can be improved upon, but they should be relied on wherever possible.

We also think there is merit—and I know that some of the other submissions have said this—in supplementing the books with narrative statements of purpose and description and accountability in a broad sense. That will make more sense to the majority of constituents of charitable organisations than the balance sheet profit and loss statement type of reporting. We think that if there is to be reform of arrangements in this sector it would be beneficial to have an ongoing dialogue between the sorts of organisations that made submissions to this inquiry and those people who are drafting new regulations.

We are certainly supportive of the notion of consistency between levels of government. They are all different. Every jurisdiction in Australia—and I include the 700-odd local governments—has a different interpretation of what being a charity means. That is unhelpful and unfair.

Finally, by way of an opening statement, I think it is possible—and I think we have had some fresh evidence in the last three or four weeks—that the paradigm of relationships between the government and the third sector that has prevailed over the last decade, like many other of the base assumptions that prevailed over the last decade, is probably now in fairly sharp question. Perhaps it is time to move beyond the purchasing-providing paradigm that emanated from the early 1990s.

**Senator MASON**—Which paradigm is that?

**Mr Mundy**—It is the paradigm of purchasing and providing services such that the relationship between government as funder and charitable organisations as providers is predominantly viewed as a commercial transaction based one. It might be time to move to a concept of a partnership between government as funder and charitable organisations as providers that is based more on a relationship of common purpose, trust and longer term objectives rather than on a purchasing of units of service type of relationship. We think that will be a more constructive relationship going forward and we detect some similarities between that view and some elements of the policy of the incoming government on the notion of a compact between

government and the third sector. We think that is an idea that has some merit that should be further explored. That is really all I wanted to say by way of introduction.

**Mr Besci**—Good afternoon and thank you for the opportunity to appear before the Senate committee today as a representative of the Aged Care Association Australia and my organisation, the Bethanie Group Inc. The Aged Care Association Australia is one of two national peak bodies representing the aged-care sector. Our membership is a mix of for-profit and not-for-profit providers representing approximately 60,000 residential places and 10,000 community places Australia wide.

Currently in our industry, not-for-profit groups provide the majority of aged-care services, including residential and community care in Australia, and have been highlighted in a number of submissions to this Senate committee. Not-for-profit groups reflect the diversity of size, turnover and business sophistication of the general not-for-profit sector. For example, our not-for-profit groups range from small, 50-bed, stand-alone facilities to large, state based and national organisations.

My organisation, the Bethanie Group Inc., provides care for over 3,000 residential and community clients throughout Western Australia, with a workforce of 1,600. Our mission is to nurture, serve and care for the frail aged and people with disabilities, and we do this through multiple programs and services. As a not-for-profit group, the majority of our funding for aged care is through government funds, both federal and state. However, it is important to note that we have had to move into commercial activities like retirement village developments in order to support our primary mission. In addition to our not-for-profit status, we are registered as a public benevolent institution and have been granted deductible gift recipient status by the ATO.

The aged-care environment in Australia is a highly regulated one, with onerous reporting requirements that we are required to undertake as part of receiving federal funding. In addition, we have to comply with state reporting requirements and, if you receive funding from different agencies, then there are specific financial reporting requirements. This means that we are providing lots of different reports for our funding and, as you would recognise, this takes up time and resources that could be put elsewhere.

Our main funding agency, the Department of Health and Ageing, now requires providers to prepare and submit audited general purpose financial reports, regardless of the size of the organisation. So, essentially, not-for-profits in aged care are reporting to the same level as ASX listed companies. As an example, my organisation spent approximately \$347,000 in preparation of these reports for the last financial year, which were tabled last night at our AGM. To put this in perspective, for this amount of money our organisation could have provided 9,500 hours of community care in-home respite for carers of people with dementia, 2,400 days of nursing home care for the very frail aged and sick, 13,000 hours of day centre care for young people with disabilities and over 93,000 home delivered meals, Meals on Wheels, for seniors in the community.

I am certainly not saying that we should not have comprehensive financial reporting and auditing. However, I do believe that this level of financial reporting required from aged-care providers, whether they are not-for-profit groups or for-profit groups, is excessive. Professor Warren Hogan, the eminent economist, recently recommended in the Grant Thornton *Aged care*

*survey 2008* that the requirement for aged-care organisations to provide general purpose financial reporting should be discontinued and replaced with special purpose financial reporting, still maintaining prudential reporting but without the excessive cost. Our history shows that the use of special purpose financial reporting is about one-third of the cost for general purpose financial reporting.

As part of my preparation for today, I have reviewed a number of the previous submissions to this inquiry. A number of organisations and groups have raised the option of a national statutory authority that will cover any matters relating to the regulation and reporting of not-for-profit groups and charities, and I would certainly support this notion. However, there would need to be strong leadership from this entity at a national level to work at reducing the complex reporting requirements at the different federal and state levels, as well as a commitment from government to work cooperatively to streamline the reporting process. It would certainly benefit the aged-care industry if this process were implemented.

Finally, I would like to make comment on the responsibilities of the not-for-profit sector to promote accountability and transparency. Our sector receives many tax benefits and, as identified in Senator Andrew Murray's report *One regulator one system one law*, we are able to carry on daily activities mostly immune from taxes. My organisation believes that it is very important to recognise this commercial benefit and the importance of accounting for and demonstrating the additional services that we are able to provide to disadvantaged groups in our community. We have recently taken the position of reporting our social obligation contribution in our annual financial report. As an example, in our most recent report, we included the following—and this was tabled last night: 'We continue to measure our social obligation activities to meet the primary constitutional objective of the Bethanie Group, that being to operate for charitable purpose and as a public benevolent institution to provide accommodation for the aged and disabled persons. There is a social obligation that attaches a cost. This cost is in real terms as well as an opportunity cost or the cost of opportunities foregone.'

**CHAIR**—I am sorry; do we have a lot longer with this?

**Mr Becsi**—One page.

**CHAIR**—Okay.

**Mr Becsi**—It continues: 'This cost recognises the financial value that we meet that exceeds our minimum requirement under regulation or to which there is no direct subsidy from any form of government or statutory authority of outlet.'

In the last financial year, my organisation contributed back to the community over \$3 million in aged-care services that either did not receive direct government subsidies or were over and above the minimum regulatory requirements. Our largest contribution was in our ability to provide more services to residents who could not pay to enter our aged-care facilities and in our ability to provide low-cost rental housing in our retirement villages and chaplaincy services. What this means in practical terms is that we are able to provide more care to disadvantaged older people in our community as part of our mission and charity focus. Our organisation believes very strongly that it is important to be able to quantify in dollar terms our mission and social obligations to the community and would strongly promote this as a standard reporting

requirement for not-for-profit groups. Thanks again for the opportunity to provide an aged-care industry perspective to this inquiry.

**CHAIR**—Thank you. Mr McKenzie?

**Mr McKenzie**—I am the Chief Executive Officer of Goodwin Aged Care Services Ltd, which is Canberra's largest aged-care provider. We provide residential community care for approximately 500 residents in the ACT. Whilst we are Canberra's largest provider, we are small fry on a national scale. The smallest aged-care provider in the ACT provides accommodation for 40 residents. I thought I would give a different perspective. I have not prepared a formal submission. I thought I might give some information having regard to some of the questions the senators were asking previous speakers.

We are a not-for-profit company limited by guarantee. Three years ago, we converted from an incorporated association to the not-for-profit company limited by guarantee to give us a higher level of corporate governance, and we report to ASIC as a requirement of that. We have had annual donations over the last three years of between \$1,500 and \$14,000 per annum. We have an annual turnover of \$19 million for our operational purposes and, in addition to that, a capital turnover of approximately \$30 million per annum, which is on construction of new aged-care facilities. So that is in the scheme of up to \$14,000 in donations for a \$49 million turnover.

As Stephen indicated, a little over half of Australia's aged care is delivered by the not-for-profit sector, but we are funded the same as the for-profit sector. I take a different attitude to a lot of other aged-care providers from the not-for-profit sector in terms of running the operation on a commercial basis, indicating that there are for-profit sector people who are supposedly making a profit out of this, so we need to run things a little bit differently. But I think the main difference between the for-profit sector and the not-for-profit sector is: what do they do with the surplus? In our case, we do not actually make a surplus out of our aged care; we operate on a deficit, and that is because we provide a greater level of accommodation for people who are financially disadvantaged and cannot afford to enter aged care in the first instance. That is what differentiates the for-profit sector and the not-for-profit sector.

I take exception to the not-for-profit sector being asked to be regulated in a different manner to the for-profit sector, when I am already complying with Corporations Law and reporting to ASIC and receiving the same level of funding that the for-profit sector receives, when I do not rely on donations. The donations we do receive are from three people. They are not donations that we seek, but they provide them anyway. Generally the donation is given for a specific purpose. One person gives us \$1,500 per annum to buy the residents a Christmas present. When I arrived five years ago, it was \$1,500; it is still \$1,500, but our size has almost doubled, so we now have to supplement that quite substantially from our own funds, but the gesture is appreciated. We tell him what we did with the money. We account back to that donor. Another person for two years gave us a \$10,000 scholarship. Her husband had been a professor at a university, and she wanted to do something for the benefit of educating our staff to provide a higher level of care, and that provided two \$5,000 scholarships for staff. We accounted to her for what we did with those donations. The third person last year gave us a \$5,000 donation. She was the daughter of a community care client who had been a recipient of services we provided, and she provided some funds for equipment to be purchased in the community sector. I told her that I

did not need to purchase any equipment—that I had sufficient—and she said, ‘Well, keep the money anyway.’

That is the level of accountability that in our own environment I think is appropriate—to the actual donor, rather than having to have a separate set of regulations and responsibilities to a third party, when the scale is that I get \$14,000 which I do not ask to receive. It comes anyway, so we report to the donors.

There are a couple of other interesting issues that the committee might note. We do have a lot of different acquittals that we provide to government for specific grants that we receive. Each one of those acquittals costs me between \$1,000 and \$3,000 for our auditor to audit the acquittal, and in some cases we are talking about \$10,000 programs for which it costs me \$1,000 to get the audit certificate. That is with our own CFO preparing those statements. So, every time there is little bit more regulation, there is a bit less service I can provide for financially disadvantaged people. There will be a cost to any additional regulation that is required.

We have prudential disclosure requirements that we have to provide for the Department of Health and Ageing in terms of our funding. We also have to provide financial reports to any prospective person who is coming into an aged-care environment. In addition to that, we have our financial statements that we are required to provide to our members. We also have different prudential requirements and accountability requirements for the Department of Health and Ageing. We are required to undertake an extensive aged-care accreditation process every three years. In the ACT, ACT Health are also looking at what we do, so we are required to account to them. We have HACCP, which is food standards, which we are required to be compliant with. We have to have a boarding house licence because we have people living in our facilities. In addition to that, we are accountable to ASIC, and of course we have to comply with Corporations Law. The question I would ask the committee is: what benefit would any further regulation provide to residents or members of Goodwin? Thank you.

**CHAIR**—Thank you.

**Senator BUSHBY**—I think between the three of you and your written submissions you have made a very good case. Before I go into this, I should probably state that I used to do paid work for Aged and Community Services Australia prior to when I joined the Senate. I think you have made a very good case that the aged-care sector is very highly regulated. That is for a whole host of historic reasons. I think that the comment made by you just then, Mr McKenzie, that further regulation needs to be justified on a cost-benefit basis, to show that the cost of the further regulation would actually deliver better outcomes for residents, is correct.

But the question I have is to do with the fact that a lot of the homes, the aged-care providers, are actually run under the umbrella of other not-for-profit charities which are not as highly regulated. For example, the biggest not-for-profit entity in Australia is the Catholic Church, which has some 4,500 organisations registered for GST purposes. Some of them file accounts and some do not. Obviously the ones that do file accounts would include those that are operating aged-care homes. I guess my question to you is: although you say what you say about aged-care providers, you would not be arguing against the need for further regulation or consistency in transparency and accountability of the umbrella organisations that provide some of that care through aged-care organisations. Would that be the case?

**Mr Mundy**—You are right in that aged-care providers already have to meet commercial standards of reporting—

**Senator BUSHBY**—It is one of the most highly regulated areas.

**Mr Mundy**—partly by virtue of their size. Because of their size they get caught in the ASIC net quite easily and therefore report at that sort of level, by and large. But I think in the case of religious organisations in particular you might be talking about regulating something other than not-for-profits and charities, which I do not have a particular view on. You are actually talking about regulating churches, which I think is a slightly different proposition.

**Senator BUSHBY**—Not so much the churches but the activities.

**Mr Mundy**—All the churches are different. All of the other churches, to my knowledge, have separate structures that run their service delivery which are incorporated in their own right. The Anglicans certainly do. I know they are giving evidence later today. You can ask them directly. The Catholic Church has a mixture of diocese based structures and religious orders, all of which have different forms of incorporation. All of them run their aged care as a distinct business unit, but if you wanted to regulate the very diverse structures of an organisation like the Catholic Church I think that would be a major undertaking, bearing in mind that many of the orders are actually headquartered in other countries. It is quite a complicated proposition.

**Senator BUSHBY**—I do not think there is any suggestion that you would regulate the Catholic Church per se, but you would regulate activities that the Catholic Church may well be involved in.

**Mr Mundy**—I do not think there would be any objection to having the service delivery activities of churches under a common reporting regime. In fact, our submission argues that we should use the standard accounting technology wherever possible to regulate those sorts of activities. I would certainly support that intent.

**Senator STEPHENS**—Gentlemen, thank you for your submission. I have to declare an interest. I have to say that my dad was looked after very well by Goodwin Care until he passed away last year. He fell in love with his carer, I have to say. She was so good to him. I want to ask a question about the issue of better regulation. You have given us some extraordinary information about the actual costs of things like auditing and compliance. One of the terms of reference is about what government can do better to ensure both the efficiency of organisations and the extent to which they can meet their mission. It goes to what you raised about the alternative services that you could have provided with the amount of funds that you spent on general purpose financial reporting. I think it would be helpful for the committee to hear more about how the general purpose requirement affects your sector.

**Mr Becsi**—I will speak about it from my organisation's perspective.

**Senator STEPHENS**—Thank you. That would be helpful.

**Mr Becsi**—A couple of years ago, as part of our receiving additional income from the government for the purposes of aged care—in other words, a supplementation to our

indexation—we had this additional cap so that we could achieve some supplementation on our revenue stream. But, in order to receive that additional supplementation, we were required to move to general purpose reporting. That is a much higher level of reporting, which means you have to go to another level, just like a publicly listed company, effectively.

Before that, we were, as a very large organisation, under the umbrella of special purpose reporting, which was still reporting the financial data but we were given the liberty of cutting that particular data any way we liked. There have been recommendations from, for example, Professor Warren Hogan, that for the industry as a whole there should be special purpose reporting against clear, defined outcomes that are agreed to between the sector and the government. So you are reporting what is appropriate, but in the case of our own organisation the cost was a third. So it is significant.

Going to that higher level does mean we do have to spend more money reporting at a higher level, which may not necessarily be appropriate for the industry we are in. Other organisations—certainly those outside of aged care—that audit aged care have said, ‘If you had this particular information and presented it in this way you would be able to fall under the umbrella of special purpose reporting and significantly reduce costs but still give the government the appropriate data that it requires for the funds that it is paying.’ That is just an example of where, within our own organisation, we are spending a lot more money for maybe no additional benefit.

**Senator CAMERON**—I am not sure who would like to take this question. I want to talk about the charity website in the UK. I must say it is very interesting. The approach that they seem to take on this is a four-tier reporting approach, depending on the income of the charity. Do you think that is an appropriate way to deal with it for this country?

**Mr Mundy**—There do need to be scales. We need to have a different approach for an organisation that is funded for one position which is a volunteer coordinator and that is its only salaried position. That would have a turnover of, say, \$50,000, \$60,000 or maybe \$75,000, with all overheads included. I think we do need a different standard that applies to those which are small than that which applies to the \$200 million or \$300 million organisations, for which a much higher level is appropriate.

One of the things that we do not have—and this is really following on from Stephen’s point—is shareholders. General purpose financial reporting is designed to prevent risks to shareholders. We do not have shareholders. We do not have that class of risk. We have a different class of risk and the reporting should reflect that rather than something that was developed for another purpose. But the idea that it should be proportional to the size of the organisation is certainly something that we would support in principle.

**Senator CAMERON**—The point was made very strongly in the evidence given by the Wilderness Society in response to questioning by some of the members about political involvement. I take the view that everyone is entitled to be involved in political activity.

**Mr Mundy**—So do we.

**Senator CAMERON**—Looking around the web I can see that you guys are involved in some way in having your political voice heard. You do not have a problem with having your political voice heard because you are charity, do you?

**Mr Mundy**—None whatsoever. The one thing we will never do is advocate for one political party as opposed to another—as a point of principle but also as a point of positioning. They change.

**Senator MASON**—That is right. If you are going to advocate for a political party to the exclusion of another then perhaps you should join a political party.

**Mr Mundy**—Exactly so.

**Senator MASON**—Mr Mundy, Dr Ogle from the Wilderness Society said that disclosing fundraising costs could be a difficulty. But, as a matter of principle, you would suggest that, where you can, that would be a good thing to do?

**Mr Mundy**—Yes. I would not want to reduce it to a simple quantitative calculation. I think it would be foolish to not account to your donors for what you have done with the money they have given you, if you want them to give you more in the future. Regarding the notion that it could be reduced to a ratio or a figure in every instance, I do not think that would be possible. I certainly think there is an onus on people who are in receipt of donations to account to the people who have given donations to them, in an appropriate fashion, and that might be in the form of a narrative—‘We received \$20,000 and we spent it on this’—rather than expressing it as a proportion. Many of our members have a very variable level of fundraising. They do not run the same raffle every year and they do not run the same activities every year, so the ratio would in fact go up and down depending on the level of activity they have done and the level of requests that they have received. So, yes, the principle of accounting back to the people who gave you the money—what you have done with it—is a very sound one. I think it would be difficult in our sector to reduce that to even a bandwidth of numbers.

**Senator MASON**—We do not want difficulty or capacity, in a sense, to trump transparency. That is probably the committee’s view and it is certainly my view.

**Mr Mundy**—I think it is a good way of putting it.

**Senator MASON**—I am sure we will get to that question again later. By way of comment, Mr Becsi—I will not go into this now; we do not have the time—have you seen the chartered accountants’ report regarding the view of not-for-profit financial annual reporting? It is in their report of May 2003, which goes to the sorts of accounting reporting requirements that they suggest for the not-for-profit sector.

**Mr Becsi**—No, I have not read that.

**Senator MASON**—It goes into great detail about some of the issues that you mentioned—that the not-for-profit sector should focus on reporting on things like generating funds, administering funds and expending funds, and looking at non-reciprocal transfers and also the

disclosure of any economic dependency they have to either government or corporations. If we did that, that might be a start. I refer that to you, so have a look at it.

**CHAIR**—Gentlemen, thank you for coming in this afternoon.

[3.17 pm]

**CHAMBERS, Ms Kasy, Executive Director, Anglicare Australia**

**REGAN, Dr Sean, National Policy Adviser, Anglicare Australia**

**CHAIR**—Before I ask Anglicare Australia for an opening statement, I should point out, in light of disclosures, that I think most politicians have from time to time been involved quite heavily and in fact have been on the boards of various charities and not-for-profit organisations. We will make that blanket disclosure and say that, if there are any specific interests that a specific member has that will affect the inquiry, naturally they will talk about that. Generally speaking I think it could be taken for granted that all of us have a quite strong interest in the sector.

Ms Chambers and Dr Regan, thank you for coming. Do you have an opening statement?

**Ms Chambers**—I have a brief one. We certainly appreciate the input of politicians in their previous lives into our various organisations. Would like to make a brief opening statement, basically to give some principles to frame our submission. Anglicare Australia is a representative body of 45 agencies across the country. They are involved in a whole range of community services and they operate in every jurisdiction in Australia. As such, they represent the diversity of the sector. We would also like to point out that we are addressing this inquiry, both here today and in our paper submission, as a charity and not as a religious body. We believe that there is a set of fundamental differences between charities and the larger not-for-profit sector, whilst recognising that charities are a subset of the not-for-profit sector and certainly recognising the value of that larger voluntary sector and its range of activities in a civil society. We are certainly also taking part in discussions on the compact around that.

We would also like to emphasise the point that the currency of charities is public trust, and so we believe that accountability and transparency must be paramount. We acknowledge the PricewaterhouseCoopers submission to this inquiry. We would like to caution, however, that it is a rationalisation and harmonisation of myriad current requirements, which previous witnesses spoke to, so that the rationalisation and harmonisation of those current requirements place no extra burden on charities but rather achieve the desired purpose of public knowledge. In this regard, we feel that a matrix of purpose, size and risk to vulnerable citizens should educate the regulatory requirements and not just the regime of financial accountability.

As you can see from our submission, Anglicare Australia supports an independent charities commission with three main roles: determination of charitable status and the benefits that that ensures, education and regulation. We will keep our opening statement fairly brief at that.

**CHAIR**—Thank you.

**Senator PRATT**—I noticed at the conclusion to your submission that you talk about the prospect of a national commission and the form in which you would like to see that take. You advocate for a statutory authority as the only serious option. Would you like to expand on the

rationale for that? You rule out wanting to keep it independent of the executive, the ATO and the sector.

**Dr Regan**—It is not the only serious option. We say it appears to be the only serious option.

**Senator PRATT**—So we might, in the course of our inquiry, come across some other serious options?

**Dr Regan**—Yes. That was on the basis of various things that were written by such people as Senator Murray and the round table organisation. It has to do with the usual complexities of the federal system and the different regulations that apply to the same organisation working in different states and territories. Also, we suggest that it could be a serious option or perhaps the only serious option because the harmonisation that will be necessary to have a single regulatory body that would have sway in all of the jurisdictions would require pretty much a standardisation of the compliance rules and costs. So it seems that a statutory body at the federal level would be the most appropriate and certainly the most logical thing to be proposing. But I would not say it is the only serious option.

**Senator PRATT**—Okay.

**Senator FIERRAVANTI-WELLS**—Do you see merit in some form of consolidation of charities under one group? There are similar sorts of bodies in other systems around the world. Do you see that that would work in Australia, given the myriad smaller not-for-profit groups out there compared to the bigger groups? Do you see merit in some form of consolidation?

**Ms Chambers**—One of the benefits of the charitable sector is its organic-ness. It often comes from forms of action. It often comes from local groups responding to needs. So sometimes some of that consolidation can be difficult. I think there is often a logical life cycle where work groups come about to face a need, grow and then amalgamate or merge. I also think that a lot goes on in the charitable sector—I can only talk about the community sector; I cannot talk about the environmental, the arts or the wider non-profit sectors—where larger agencies do aid and help smaller agencies, particularly in areas of governance and finances.

**Senator FIERRAVANTI-WELLS**—Previously, Senator Cameron asked a question, and I want to ask a follow-up question to it. If you had to scale charity groups, say, one to four and they had different reporting requirements, should part of that scaling process also include the nature of their status? For example, you can have a charity group with a turnover of \$4 million that is an incorporated association, yet you can have a company limited by guarantee that may have a turnover of \$2 million. So, within that scaling situation, should consideration be given to not only the amount that that charity generates over a year but also its actual structure in terms of the reporting that that structure requires them to do anyway?

**Ms Chambers**—I think there are two issues in that question. One of them is the range of governance and the structural formations that charities can take and still gain charitable status. The other one is around the matrix of reporting. I think we have an interest as a community in ensuring that the policing—for want of a better word—obligations do not cost more than the actual amount of the public money that is going in. Sometimes I think we run into that. First of all, we would advocate for a matrix of purpose—the charitable status—and then size. Let us say

an organisation is receiving a public grant of \$11,000. I have just come from a committee meeting of one such one where we have estimated that we utilised 46 per cent of that grant in accounting for that grant. Obviously that is not a good use of public money.

The other lens that we would put over that matrix is the vulnerability of the client, and that is where we get into those different regulatory environments or different regulatory types. We would see that an able-bodied person accessing a pony club on a Sunday afternoon requires much less help in order to use that service but also much less guarding against risk than a child who has a disability and is unable to make choices about where they go to. Similarly, an older person with dementia is very much more vulnerable than an older person in a retirement village who is perfectly independent.

**Senator FIERRAVANTI-WELLS**—Following on a question from previous witnesses, do you see that it is important for the community value of the voluntary work that a particular organisation does be a requirement for reporting? In other words, if the value of the work that you do in the community is, say, \$3 million—and I think Mr Bishop, who appeared before you, made that comment—do you think that it is important for that to be reported?

**Ms Chambers**—I have a yes and a no answer to that, I am afraid, Senator. For example, Anglicare Australia utilised the services of over 21,000 volunteers in the year 2007. It would be wonderful to capture that information and to let the public know that that is happening, but it is yet another reporting requirement on organisations that already report in so many different places and in so many different ways. I think that comes to one of our points: we would like to see as much accountability and transparency as possible—in fact, possibly even greater than we currently have—but we would not like to see that inflicted before we remove some of the other formulas.

**CHAIR**—In terms of the regulatory body, you are saying that there should be a process of review and appeal. Who would hear those appeals, do you think? Would that be done internally within the regulatory body? I know it is probably premature to ask these sorts of detailed questions.

**Dr Regan**—It would depend very much on the nature of the regulatory body. If I may take Minister Tanner's latest suggestion as an example. He says that we should not rule out harnessing information technology to deliver a virtual single regulator by creating one interface with multiple layers of government and between different agencies within the same layer. I have no idea how on earth you regulate that, assuming it could ever get off the ground. So I am afraid, without avoiding the question, it would very much depend on whether you had a statutory authority or a non-statutory authority and on what the nature of that authority was. So I am afraid that we cannot really answer in detail at the moment.

**CHAIR**—Yes, and I do take your point. It seems that we are starting to accumulate a lot of different roles for this regulator—educating, mediating, reviewing, appealing. I think Anglicare is in a very good position, given the range of your services, to say what would be the priorities for any kind of national regulation.

**Dr Regan**—There is perhaps a more fundamental issue, which is illustrated by the recommendations of the 2001 inquiry, which has to do with the very nature of a charity. I would

not say that the various recommendations contain contradictory proposals, but they do certainly contain proposals which are in a certain tension with each other. So possibly one of the most fundamental things is to work out what you mean by a charity, and then I think you would have a better idea of what kind of regulatory body would be appropriate.

**CHAIR**—Then I imagine that a lot of people who are listening to this or reading this might get a bit nervous about losing their charitable status.

**Dr Regan**—Yes.

**Ms Chambers**—Yes. I think that is part of the increased transparency that we are talking about. But, also, if we as a community value the sum total of what this part of sector is doing, we would need to look at how that extra is funded. As you would know, if bodies have that status, it makes it cheaper in effect for them to deliver the services than it is for those that do not have that status. For those services, if they are necessary services—and we are saying that they are by the nature of the charities—we would need to look elsewhere. So, while there might be nervousness about the process, if it was fundamental change that we were looking at, that would have to come out in the wash, as it were.

**CHAIR**—There is also a proliferation of quite small charities. Many people in high-profile positions start up a charity or a foundation or something. How would you view the role of those small, one-off type charities in this whole thing?

**Ms Chambers**—We do make some reference to them in our submission. The latest is about missing people, for the parents of young people who are missing overseas. Without wanting to take away, in any way, from the immediacy of the pain that someone involved in a particular situation feels, I think those are the trusts and the charities that we often later see amalgamated. I would not say it is my experience but it is my anecdotal experience that they often have quite a short life. However, I think those trusts and those charities need to be every bit as transparent, because they do have an immediacy and they capture immediate sympathy and an immediate public dollar. So they need to have that same level of transparency.

**CHAIR**—And I think that goes back to Senator Fierravanti-Wells's question about putting them under some kind of umbrella.

**Senator FIERRAVANTI-WELLS**—Yes. Are we talking about charities that suddenly respond to an emergency?

**CHAIR**—Yes.

**Senator FIERRAVANTI-WELLS**—I have to declare an interest in a charity that I chaired in the past in these same circumstances. Often in this sector you are reacting immediately to a crisis. And to immediately move quickly to get the requisite, in that case, tax deductibility and, in some cases, overseas accreditation, can take some time. Often, it is those sorts of circumstances which the charity may push quickly to try and achieve but cannot do very quickly. Are you saying that there should be some special provisions for those sorts of emergency situations?

**Ms Chambers**—I do not think I was. I think I missed the point of your question earlier, and I apologise for that. I was saying that we would believe that those emergent charities should still have the same level of public scrutiny, particularly as they can often attract an immediate, sympathetic dollar, but that if there was an independent regulatory and definitional commission it would maybe be able to make these determinations very clearly if we had some very clear guidelines. So they would be quicker than is currently so.

**Senator FIERRAVANTI-WELLS**—On the question of emerging charities, one thing that I have often seen over the time that I have been involved in the sector—to pick up your point, Ms Chambers—is where a small community sees a need and goes out and establishes a charitable organisation, not knowing that there are probably similar charitable organisations out there that do the same thing. Is consolidation part of what we should be looking at—when I talk about consolidation, I am talking about consolidation of charities that are in the same sort of sector—because, in the end, they are all reinventing the wheel as they go out there each time to establish themselves? Wouldn't consolidation there be helpful for them, so that all of the dollar actually goes to what it is required for?

**Ms Chambers**—I have not really considered this question before, but I think from my experience in the non-profit sector both as a volunteer in many services and in my current position I would probably say no. Whilst I agree that you might be inventing the endpoint wheel, I think you get more out of the individual spokes, more out of those volunteers and more out of people if they are responding to a need in their own community.

**Senator CAMERON**—Ms Chambers, on page 3 of your submission, you make a recommendation. I think I understand what you mean, but I would like some clarification. You have a very important issue—that is, the distinction between not-for-profit and charity. You say:

A clear distinction be made between not-for-profit organisations in general and charities as a sub-set of this broader group; with the taxation rights and responsibilities of the former covering the latter, but the rights and responsibilities of the latter not necessarily accruing to the former.

Then you say:

Charities as discrete entities be defined in terms of agreed charitable purpose —itself identified by way of agreed outcomes or activities; and that charitable works as part of an organisation's overall operations be defined likewise.

Could you just clarify exactly where you are going with that recommendation?

**Ms Chambers**—We are talking to a couple of points there, I guess. One of them is the nature of the non-profit sector and the various parts within that. I did mention in our opening statement the fact that there is a set of fundamental differences between a charity—for example, one that might work with people with mental health issues—and a non-profit organisation that might get together to enable it to hire a field for the pony club on a Sunday afternoon. They are both very valuable but, we would believe and contend, require different treatments in taxation.

We would see that the charity is a smaller group, part of the not-for-profit sector but a small part thereof and the most specific point. At the moment it is PBI status, which refers to the smallest part or the most specific part of that sector. So we would see that the charities should

have the highest degree of special treatment under the taxation regime, but that should be equalled with the highest degree of transparency and scrutiny. Our second point, in that second paragraph, is around that definition of charities, which I am sure you have talked about with other witnesses today—around the purpose of the charitable body rather than necessarily, or as well as, their activity.

**Dr Regan**—It just goes back to the point I made earlier about the recommendations of the 2001 inquiry, which do try to be more specific about how a charity's purpose should be identified. I think that is something that should be looked at very carefully indeed. You have to say that the purpose is altruistic but also that it could involve belief in a supernatural being and could involve relieving the pain of animals, promoting culture and so on. I think that that needs to be tightened. It is quite possible that you can say that all of them should have a particular tax status, but they do appear, commonsensically at least, to be quite different activities.

**Senator CAMERON**—You would see a distinction on supernatural beings. What would achieve that charity status?

**Dr Regan**—No, I mean that it is a supernatural being of any kind, including principles. So you could even say that if you believe in justice you are not dealing with something you can point to; you can only point to its manifestations. I think it should be more specifically or precisely—

**Senator CAMERON**—But isn't that a catch-all, really? Isn't that a very poor description of the church group?

**Dr Regan**—I do not know about a church group—but a religious group. It would cover all sorts of things. If someone says, 'I do believe that the world is held up by an invisible tortoise,' you cannot prove or disprove it, but if that person sincerely believes it then I suppose on one level you could say that that person has a religious belief. Whether the secular authorities—

**Senator CAMERON**—Charitable status!

**Dr Regan**—Yes. Charitable status is another question entirely.

**CHAIR**—And overlaying that we have the risk issue that Ms Chambers was talking about earlier, the risk involved in regulation.

**Ms Chambers**—We certainly see that as a matrix, as we have said, overlaying purpose of the institution or entity, whether it be charitable or not; size—again, different requirements on an \$11,000 entity than on a multimillion-dollar one; and, as we say, proximity to the vulnerability of people. That then brings us into those different regulatory environments as an accountability as well as the financial accountability.

**CHAIR**—In terms of tax treatment, do I detect that you are leading towards a different tax treatment for—

**Senator FIERRAVANTI-WELLS**—That was the question I was going to ask.

**Ms Chambers**—For the various levels of not-for-profit?

**CHAIR**—Yes.

**Ms Chambers**—Yes. We would see that, at the moment, the tax treatment of charitable organisations enables them to offer the citizens of this country something at a lesser price to government. It is coming out of one pocket and into another in some terms, so, if that were to go, it would need to come from somewhere else. I would, however, be hesitant to sit here in front of this committee and recommend that the local football club or the local pony club, sporting association or even arts society gains similar treatment.

**CHAIR**—Because most of those really small groups would not be subject to any kind of tax regime in any case.

**Ms Chambers**—Yes. I am probably also talking about what I would call those anomalies around what we have here in the ACT, certainly, if not in every other jurisdiction, of reasonably large non-profit clubs. They do turn over quite a bit of money.

**Senator FIERRAVANTI-WELLS**—And that fits into the matrix point that you were making earlier. In other words, what you are suggesting is that it is a matrix that takes into account the status of that, whether it be an incorporated association or a company limited by guarantee, the value of its turnover and its definition. Of course, that brings us then to determining one definition, because that is the other problem here. To do something like a matrix, you actually have to determine what a charity is, and it has to be a uniform definition of charity right across the spectrum, so it would require, if I understand correctly, a redefinition of charity and then a determination of a matrix that takes into account different levels of charity. Is that right? At the bottom, it could be your not-for-profit pony club or whatever and then variations—the Wilderness Society, maybe, or something like that—that we were talking about before. Thank you; I understand.

**Dr Regan**—Could I just stress something that Kasy Chambers has said. I think perhaps we have not stressed it enough. That is that accountability is not simply financial accountability.

**Senator FIERRAVANTI-WELLS**—I appreciate that.

**Dr Regan**—It is very important in charities that there be other forms of responsibility.

**Senator FIERRAVANTI-WELLS**—Thank you, Mr Regan. And in a matrix it would be a range of accountability that would include both financial—

**Dr Regan**—Yes.

**Senator FIERRAVANTI-WELLS**—and non-financial factors. Thank you.

**Senator CAMERON**—How do you make a judgement about whether Anglicare is more important than the Wilderness Society? Some people might say: ‘Uh-uh. One is from my point of view absolutely more important than the other.’ It is a value judgement, isn’t it?

**Ms Chambers**—We would not make that determination. We would not be alone in saying that we feel that the definition of charities is long overdue for some reworking and that advocacy and organisations that work in the area of the environment, that work in the area of public good—and that may include some advocacy; bipartisan advocacy, we would stress, but certainly advocacy—should not be exempt from those areas as some of those organisations currently find themselves to be. We would certainly all be aware around this table of some of the anomalies of some groups that are in and some groups that are out.

**Senator PRATT**—Could you highlight some of those for us?

**Ms Chambers**—The RSPCA is not currently included, to the best of my belief, whereas an organisation that would work with humans is. It comes down to the definition, which I do not have on me but I think is ‘direct alleviation of needy and poor’. As a community we now have a much broader understanding and discussion of what we think public good is, and that would include the ecosystem, the environment and animals and communities within that.

**Senator CAMERON**—Are you seriously saying that you should not get charitable status unless you can get bipartisan political support?

**Ms Chambers**—No, I am sorry if I sounded as if I were saying that. We were listening to the discussion before. I am saying advocacy, but not partisan advocacy for a particular political party. I think we used the example in our submission of advocacy around a greater pension for carers, or something that would be seen to be for the general public good in the view of that organisation.

**Senator FIERRAVANTI-WELLS**—Lobbying rather than advocacy of support in that sense?

**Ms Chambers**—Yes.

**Senator FIERRAVANTI-WELLS**—General lobbying rather than partisan advocacy?

**Ms Chambers**—Yes.

**Senator CAMERON**—If something is legal—and lobbying is legal—why would a charity not have access to political lobbying from a particular perspective?

**Ms Chambers**—I am not sure—

**Senator MASON**—They should have to take on the same laws that relate to political parties—they should pay tax. No-one cares that they are not-for-profit. It is just that the tax regime applies; that is all.

**CHAIR**—I think this is a discussion between committee members, so I thank Ms Chambers and Dr Regan for coming this afternoon and giving us the benefit of their advice.

**Proceedings suspended from 3.46 pm to 4.00 pm**

**CAMPTON, Mr Jonathan, Researcher, St Vincent de Paul Society National Council of Australia**

**FALZON, Dr John, Chief Executive Officer, St Vincent de Paul Society National Council of Australia**

**CHAIR**—Thank you, Dr Falzon and Mr Campton, for coming on a little early. Do you have an opening statement that you wish to make?

**Dr Falzon**—Yes, thanks. The National Council of the St Vincent de Paul Society welcomes this opportunity both to make the submission and to speak to the Senate Standing Committee on Economics regarding the inquiry into disclosure regimes for charities and not-for-profit organisations. Our evidence concerns the impact of the proposed changes on a charity rather than the greater not-for-profit sector. Vinnies is a charity in the traditional and modern understanding. It fits all legal and legislative understandings of a charity. In particular, it is for the public benefit, benevolent, non-profit, altruistic and focused on providing direct relief to those experiencing disadvantage, as well as advocacy on their behalf. The St Vincent de Paul Society in Australia is membership governed and democratic and strives always for transparency and openness in all its dealings. We experience a high level of trust and support from the Australian public. We enjoy the support of around 40,000 volunteers and hundreds of thousands of donors and benefactors.

We note that we already experience a degree of regulation. We enjoy the present relationship with the ATO and we believe that it is a capable regulator that seeks, in general, to support the charitable sector. We agree that disclosure is a good thing. Therefore we must move to a wider discussion on what charities are in fact here to achieve and how best to ensure that they are able to achieve their intents with adequate disclosure regimes and regulatory frameworks. We believe that this discussion should appropriately occur within the context of the proposed national compact.

I will be making a few comments about disclosure regimes, and then my research officer, Mr Jonathan Campton, will make some comments about regulatory frameworks. The society supports the simplification of the current disclosure regimes with a single national disclosure regime that is public. The St Vincent de Paul Society has experienced in other countries the introduction of increased administrative burdens relating to disclosure regimes that impact on the society's ability to alleviate poverty. To that purpose, we have provided a case study on page 10 of our submission relating to the experience of Vinnies in New Zealand. Disclosure, we believe, should be sensible, meaningful and purposive. Charities should provide enough information to allow a full and frank analysis of their affairs to be carried out. The St Vincent de Paul Society understands that its funds are owned by the marginalised in Australia and that the society is a steward of this resource. Disclosure is about reconciling with government, with the community and most particularly with disadvantaged and excluded people as to how the charity has expended the funds that are given it as an act of stewardship.

Because we are a federated structure, we should note that at a state level a standardised national disclosure system would not greatly assist the St Vincent de Paul Society, as it would

simply change existing requirements and create further compliance work. That is why the move to a national regime, which we recognise as being necessary, must be simple. Any national scheme that requires lawyers and accountants to operate beyond the present levels will add significantly to the costs of a charity in delivering its services. It must articulate the expenditure of funds to the public in a meaningful and comparable way between organisations, avoiding a one-size-fits-all approach. A national disclosure regime we believe must focus on financial accounts, voluntary labour, donated goods and service delivery standards—that is, the success of the charitable purpose as stated by the particular organisation.

The cooperation of state governments is crucial to the success of any proposed national disclosure scheme. The St Vincent de Paul Society leaves it to the committee to decide whether different regimes should apply to charities and to not-for-profits. We note the many differences between charities and not-for-profits. I simply conclude by saying that this inquiry happens within a national political, social and economic context, one in which we hope to see a common vision for an Australia that is inclusive, where no-one gets pushed out or left out. It is in that context that the purpose of this inquiry, I believe, should base its framework—the twin goals of enabling charities to do the good that they set out to do and empowering the people that the charities state they are there to serve.

**Mr Campton**—The society supports a measured, harmonised, sensible, regulatory reform of existing regulators. We would likely support the establishment of a charities commission, but it is a little hard because there is no particular body being advanced as the model at the moment. There are factors within different models that would garner our support; but, equally, there are parts of certain models that would garner our criticism. The experience of the society in England is worth noting in this respect. The society in England has had a charities commission for a considerable period of time, arguably 150 years. Throughout that time there have been reforms. The reforms that occurred around 2000 led to the society facing situations where its volunteer members were summonsed before courts. It also led to a situation where our members—again volunteer members—could not have the organisation pay for them to have directors' liability insurance. These things were corrected further down the path, but it shows the reason why we cannot just give blanket support to a charities commission. The impetus for reform must come from the charity sector. We agree with the submission of Professor Mark Lyons that it will require the lengthy involvement of a well-resourced taskforce, but we would go further to say that it will also require the lengthy involvement of the sector and those that have experience in this area to ensure that any potential change towards a national charities commission is one that works.

We have valuable knowledge of the shortcomings of other systems. We want to partake in this discussion and we see things like the national compact as being a vehicle for some of that discussion to occur. The society overall wants what is good for those we serve. This means a healthy charitable sector and the support of the community. On page 17 of our submission there are a number of dot points the society would like to see in any national regulatory system. Some of these could just be changes to the present regulatory system but, as we are looking towards the future, it is framed in a discussion about what a national charities commission could contain. Again, the message is keep it simple and clear. Change will be difficult for the sector with all of its diversity and breadth.

National regulation in place of the current mixture of regulatory control does pose some difficulties for the society. The society, like many national organisations, is a membership-based organisation that has largely grown from a grassroots level. It is because of this that our members are familiar and have operated for a long time within their state laws, excepting national law where that applies. But the suggestion of harmonising laws like fundraising laws will mean that there will be changes that occur in every state. The society will bear the cost of changing the operations in each of those states. It is a short-term cost and hopefully ultimately benefits will reign. But the reason for stressing this point is that what we must move towards must be something that is simple and attractive so that the states can see benefit in changing from their present systems to a national approach. If it is not this and if it only creates burden and administrative cost, the sector will not accept it as something that is supporting it and will see it as the opposite.

The national regulator should for this reason particularly have a very educative advisory role. This is difficult and what we have seen in New Zealand is that it has been bogged down in administrative roles. The example that was previously given by Dr John Falzon and mentioned in the report of the New Zealand registration is a perfect example of that, where in the last two months they have only worked through one month of registration backlog. Their actual administration is bogging down their Charities Commission and they cannot get through that backlog at present. While that is occurring, one wonders whether they are serving other functions such as education efficiently and effectively. We would like to ensure that whatever charities commission Australian seeks to have it can serve that educative advisory role and not be bogged down in administration for administration's sake.

We support a specialised legal structure, recognising the special place and the special composition of charities. I am only too happy, if there are any questions on it, to explain some of the corporate structure of the society, like previous panellists have had to, but the reality is that we are an old organisation, 150 years in Australia, and we have gone through various different levels of corporate veils because of that. Some of our organisations have very old corporate structures as a result of that. Other parts are moving to very modern corporate structures. All the time we are simply trying to find a corporate structure that actually fits the activities we do and the way that we are composed as a charity. I note that on page 20 we have listed some minimum features that we would like to see in any legal structure for a charity. I now open it to any questions.

**CHAIR**—Before we go on, I would like to acknowledge that Dr Falzon is also on the Australian Social Inclusion Board, so we have the benefit of that broader range of experience here as well.

**Senator STEPHENS**—Thank you for your submission. It takes a slightly different perspective than other submissions that we have had, and I am very interested in your overseas experiences. The issues that you raise about the UK's Charities Commission model are important. In terms of the experience that you had with New Zealand's Charities Commission, you said it was six months of what you called a 'costly and exhausting process' for the society. Can you tell us what actually happened in New Zealand, what was involved; and how did that actually impact on your organisation in New Zealand?

**Mr Campton**—In the New Zealand example—and I have spoken personally with those that were involved in this process—the St Vincent de Paul Society over there had been historically recognised as the charity and had always been recognised as such. In coming under the new regime that was created in New Zealand, they had to seek re-registration as a charity. Sensibly, the government created some small incentives for those that did re-register as a charity; the largest of them was a fairly blunt one, but unless they did so they were not a charity and could not get any of their entitlements. That is an incentive of one sort!

The society over there spent around two months, and I understand they had about four people working just about full-time on it, collecting together the administrative papers from the different entities—because previously they had operated as a number of entities. They had a choice whether to make each of those entities a separate charity, go to the Charities Commission and seek registration, or group them in a similar way to how our tax system allows GST groupings. They sought to go with the grouping option, so they had the task of going to each of those entities and getting all of the documents and details that were required, and that was what in large part made it laborious. Obviously, they saw an advantage in one registration to do that. That took, as I said, four people around two months.

They were told initially that they had to complete that by a certain date; that date changed to a later date. They were then finally told that—and when I say ‘they’, I am talking about charities generally; it was not just specific to the society—unless registrations were in by the end of the financial year, they would not have their charitable status for the next financial year. That brought it on, and there was obviously a big rush. There was a backlog because of that. When our submission to this inquiry was written, I noted that as of 27 August the Charities Commission was still processing a backlog of applications to 3 June. Out of interest, I went to their website today and found that now, on 28 October, they are processing applications received on 4 June. So in two months they have only advanced one day through the backlog.

We cannot give blanket support to a charities commission if this is the experience of our members overseas, where your charitable status gets threatened unless you register under the system, although you have always had registration, just as we do now. We are listed on publicly available DGR lists. If you go to government websites like ABN Lookup, you can find us listed as a DGR. To simply make organisations jump through hoops, bog down a charities commission in that administration and not let them serve other purposes such as education, advancement of the sector or looking at areas that we the society would really like to see a commission work in, that is where we see the difficulty. But we could support a charities commission that does look to those things as well.

**Senator STEPHENS**—So they are the teething issues, I guess, in New Zealand, but I wonder what benefit there is under the new regime in New Zealand for charities. What is that model actually going to offer the charitable and not-for-profit sector?

**Mr Campton**—Regarding the charitable sector in New Zealand, you can go to the website and look up a charity and check that it is a registered charity. Presently we only have lists of registered charities. There is not so much of a look-up feature. That would be one small advantage. There is an argument that it adds to disclosure. There is probably some merit in the fact that it produces some level of accountability or disclosure insofar as people can check that they are donating to charitable organisations, but I suspect that most people know the

organisations that they are donating to. If you have a doorknock, you are generally not going to dash off and ask them to wait while you check on your computer as to whether they are a registered charity. We have other safeguards in place beyond that. But that is one advantage. The other example that they gave in New Zealand, and it is quite a considerable one, is that they looked at ways that donations could be larger than was previously available in New Zealand. We do not have caps in Australia on the level of donations, which is a fantastic thing. It was incentivised so as to look at that. There probably are ways that Australia could look at increasing the way that corporate and philanthropic giving is enacted around charities. That could be an incentive that the government might like to tie into any program.

**Senator CAMERON**—Dr Falzon, why should we have more confidence in the charity groups self-regulating than in other areas, where self-regulation has failed? If you were to self-regulate, how would you ensure that that self-regulation had broad application across all charities in Australia?

**Dr Falzon**—We are actually not in essence calling for blanket self-regulation. We have never maintained that position. We believe that there should be strong regulatory frameworks as long as, as I said before, they have as twin aims the enabling of charities to do what they set out to do and protecting the people who they are in fact establishing themselves to serve. We believe regulatory frameworks are a good thing if they aid, support and monitor those activities. In no way would we be party to a situation where anybody could set themselves up as a charity, call themselves a charity and not be subjected to any scrutiny whatsoever.

As my colleague Mr Campton has outlined, we are always concerned that the manner in which the scrutiny is carried out is appropriate to the needs of the charity so that it does not act as an obstacle to the good works that the charity is able to do. The fact that it is there is something that no charity should be afraid of if, in fact, they have nothing to hide. We believe that the larger vision, the large goal, of a government deciding to engage with the charitable sector should be that there is some common purpose in arriving at a national common good. I suppose there would be nuances as to what that amounts to, but in a country such as ours, which has a strong democratic tradition of having a place for civil society organisations, we believe that this is something that is entirely appropriate to our history.

**Senator CAMERON**—If the government determined to establish a commission, don't you think, given your submissions and the experience from overseas, that would give the government an opportunity to ensure that we do not make the same mistakes as the overseas commissions?

**Dr Falzon**—One can live in hope that that would precisely be the case. Again, I declare my colleagues' views that we would in no way oppose the notion of a charities commission, but neither would we give it our blanket support without knowing the content and the structure of such a commission. In some ways, we are focusing on the disclosure regimes elements of this inquiry, and we feel a level of competence to comment on those. As to what a charities commission would look like, we believe that this should be the subject of an ongoing dialogue. I mentioned earlier that the proposed national compact could be an ideal vehicle for that dialogue to occur to arrive at a charities commission, if that be the path we decide to go down as a nation.

**CHAIR**—You mentioned, I think, Mr Campton, that there were a number of different corporate structures within St Vincent de Paul. Is there any overall accounting of them, or are they kept as separate structures?

**Mr Campton**—In the last year, we have done a consolidated sort of account of the separate state incorporated bodies and produced that for the previous financial year, 2006-07, and we are just consolidating 2007-08, which will be the second time that this has occurred at a national level. Prior to that, each of the separately incorporated state bodies would produce its own figures, but they were never consolidated at a national level. We do have a small national incorporated body, which is really just representative of the management structure at a national level. The operation of the society is still very much state based. As to that corporate structure, it historically came from things some such as the Roman Catholic Church lands act. New South Wales, for example, brought the society under it. In other states, like Queensland, we have been basically by royal charter, which is through a decree by the Crown, the Queen, to say that we are incorporated as a body under letters patent. In most other states, we have moved towards association incorporation acts as what was felt to be the best fit in most of those states.

**CHAIR**—So it has been based on different state regimes rather than different activities and whether they are entirely charitable or have some business activity in there. Is that how it has evolved?

**Mr Campton**—Yes, it has very much evolved on a state basis rather than any purposive national structure. The first time we probably saw some evolution in our organisation at a national level was probably around the late 1990s with the various association incorporation acts around Australia being more widely used and a feeling that, for the effective management of the society, at that time that was a model to use. Since that time, most changes in corporate structure have moved towards that as a model.

**CHAIR**—Have you found that there are benefits in producing the consolidated account? Did that point to anything that enabled you to run it better or manage it better? Was it of benefit?

**Mr Campton**—I will hazard a guess. At this time, we have not seen any great benefits in that way. It has not increased our management, because the management have been so state based that they find their efficiencies at a state level. It is a very low structure, where they can find those efficiencies immediately and make them in that structure. The idea of producing national ones has probably been more to do with a move within the charitable sector where there is a greater appreciation of your national entity, your relationship with the federal government and, to some extent, national fundraising efforts where there might be a need to produce figures at a national level if people want to see the impact of the organisation beyond the specific state or territory they live in.

**CHAIR**—Do you have any different views on different levels of tax according to different tiers of how you might assess a charitable organisation compared with a not-for-profit or community group?

**Mr Campton**—I think the government has some very sensible measures in place in how the GST concessions for charities exist as one endorsement, where the ATO has to actually make that endorsement and equally it can remove that endorsement. I think that is a very sensible sort

of proposal. It does not necessarily mean that you are not a not-for-profit organisation; it is just recognising you as an extra level within that structure. I think that that is consistent with not so much recommendations but a lot of the discussion within the 2001 Senate inquiry on charities, where there was quite an understanding about what a charity was. There are some very helpful and very understandable diagrams of the break-up of PBIs, charities, NGOs and the like. I think that the idea of matching concessions as you break into groups of those and matching them with perhaps where the community expects their money to go and where government would like to see their money go is probably a sensible way of dealing with it. That would be my only comment at this time on that.

**Senator STEPHENS**—Can I just go to an issue that was raised by Mr Campton. The St Vincent de Paul Society is state based with a national overarching secretariat. Several state governments have implemented a standard chart of accounts for the way in which they provide funding to organisations. I wonder if St Vincent de Paul has been part of that project in Queensland, Victoria or New South Wales.

**Mr Campton**—I do not have any personal experience and I have not heard whether we have been. However, I would not be surprised to find out that we were involved in any one of those states with that process. In some ways, this very point goes back to one of the points that my colleague Dr John Falzon made at the very end, which was the level of cooperation that is going to be required from the states too in this, because there has been a lot of good work that has occurred in the states on things like these chartered accounts. Understandably, some states would not like to move back from the positions that they have adopted. Equally, if we approach a new national standard, the societies in those various states that are incorporated and operating in those states, whether it be Queensland, Western Australia or elsewhere, will need to still respond to their own government on whatever accounting standards are set there. Equally, national organisations like the Society of St Vincent de Paul also receive very large, generous grants from other grant bodies, and they will have separate requirements too. It would be important to recognise their requirements in this discussion as well, because it would be fantastic if we could produce one set of accounts that would please all three of these major donors and grantors to our organisations.

**Senator STEPHENS**—I have just one final question. It goes to the issue that was raised in your introductory remarks about the emergence of social enterprises and how they are currently treated or how they may be treated under taxation law. The way in which your Vinnies shops are now emerging is an interesting model, where we see an income generation that is part of your overall mission.

You know there is the case about translation; I cannot think of the name of the Bibles, but there is a company that has got an issue with the Taxation Office at the moment around this. Do you see any tensions around the emergence of social enterprises and taxation treatment or categorisation within St Vincent de Paul?

**Mr Campton**—It is quite clear from yesterday's *Fin Review* that the Australian Tax Office sees some tension around this very point. That is an area that we are very mindful of. We as an organisation would defend our activities completely as charitable. I suspect in this new climate there may be questions that will be asked around our centres of charity or what might be commonly referred to as our Vinnies shops, which are all about the collection of goods and

putting them to greater use for the benefit of the poor. They are also very much about creating a social hub and a space for everyone in a community, primarily those that are low income Australians, to participate in. To that end we have no difficulty with respect to these being charitable activities.

The broader question, of course, is the discussion about social enterprise. I think that enterprise is obviously something that no-one wants to see stymied in Australia in any way. We are a very innovative, creative country and I think the last place we would like to see that occur is within the charitable sector. So I think we must ensure that the charitable sector is primarily protected and then that we create around that a supportive environment for social enterprise.

**Senator FIERRAVANTI-WELLS**—I want to ask about your views on consolidation of charities. There are various models around the world about one organisation basically raising money and that dispensing funds to various charities. Do you see that that would be of benefit? What is your view on that sort of model?

**Mr Campton**—I had the privilege of living in Canada for a little while and they have very much a large charitable body there that exists to collect funds. It carries out its own works but it also gives out money to other charities to carry out theirs. What I saw over there was a much smaller array of other charities existing viably in that environment. I think there is need to consolidate and move forward, but not in a way that creates mega-charities. This is coming from one of Australia's largest charities, but it is not helpful to create mega-charities for the whole sector that stymie the creativity and the dynamic way that smaller charities can respond to more localised issues sometimes.

Having sat through earlier presentations, I know there was some discussion about response to disaster or charities that set up in response to disaster. I think that is a really interesting example because the tension perhaps lies best demonstrated in that. Large charities like the St Vincent de Paul Society, the Red Cross and the Salvation Army often exist already in these communities and are able to respond immediately to these crises, but the crisis is so big that there is always room for other people to respond. That often occurs and other groups are formed in those crises. I would not want to see a model—this is personally rather than on behalf of the society—that sees that occur where that sort of level of involvement is stymied by the suggestion that a major charity should be the collector or should be overseeing it, because you are going to pick winners and losers when you do that. It might actually destroy some of the community animation which is so important in what charities do and how charities respond to need.

**Senator FIERRAVANTI-WELLS**—You might have been here when we talked about reporting on a matrix type arrangement which considers the size of the charity's turnover, its status and levels and those sorts of things. What is your view on that?

**Mr Campton**—I quite liked the language around the matrix. I think that it is one that the sector would understand. We have always operated at some level with an appreciation of scales and different people, but I think the matrix perhaps accepts that it is just not an up-and-down scale but that there are things that might apply across the way that charities operate. I particularly liked the Anglicare submission's focus on the fact that it not just be purely a financial measure but also things such as—I took a note of it—the 'purpose and the proximity to the cause'. They were two things that struck a chord with me, that one should be looking at what

the purpose of this charity is when designing the reporting requirements around it. Not to unfairly pick on anyone but bringing to the table the earlier discussions from those in the aged-care industry, they have a high level of reporting, in some ways because of what they do but also because their sector is open to other levels of competition, if you want to call it that, and they are giving health care and alike. The society runs aged-care facilities and our reporting requirements for those are often far more burdensome—but also needed—than other areas of the society's operations. So I fully agree we should look at things like the charity's purpose as well as its proximity—the way that we are actually carrying out that work.

**Senator FIERRAVANTI-WELLS**—Just one last question. We discussed earlier the definition of a charity, and I think that is a point across most the submissions, the need to clarify or redefine what is a charity. But one of the points that was raised earlier was about the engagement of charities, not-for-profit groups, in processes such as lobbying, advocacy and then of course partisan advocacy. As a major charity in Australia I am sure that in your time you have been involved in issues across the board—and I make no comment about the positive or negative of that. My question is: in redefining what a charity is, to what extent should an organisation's lobbying, advocacy or partisan advocacy component be considered, as to whether it is a charity or more in the spectrum of advocacy groups?

**Mr Campton**—I will give this one to John, because he loves this!

**Senator FIERRAVANTI-WELLS**—It is a hospital pass! Well done.

**Dr Falzon**—It is a soapbox. You have just given us a great soapbox! And, by all means, Jonathan, add the more technical component. From the perspective of the St Vincent de Paul Society, we would see advocacy as absolutely non-negotiable. It is integral to our charitable purpose. This is not something we have invented in recent years; it goes to the heart of our founding. In Paris in 1833, our founder made very explicit the principle that we were not simply to give assistance to the poor but to seek out and understand the structures that give rise to poverty and inequality, and to actively advocate to change those structures. If I may seek your indulgence and give you a quote that puts it very elegantly, our founder, Frederic Ozanam, said:

Charity is the Samaritan who pours oil on the wounds of the traveller who has been attacked. It is justice's role to prevent the attack.

And so for us, the St Vincent de Paul Society, we have an absolute obligation to engage in that advocacy vis-a-vis legislative, social, economic and political frameworks that we judge to be in some way either causing or exacerbating the situation of poverty and marginalisation of those we assist.

Many times people have asked the question you have put, Senator Fierravanti-Wells, in so many words. Does this mean you become party political? The answer to it is very simple: we are partisan but not party political. We are partisan in the sense that we are on the side of those we assist, the poor. The members of our society as individuals probably represent the spectrum of political parties in Australia. I have certainly had that experience in people I have met individually. But as an organisation we have a very strong obligation to call for legislation that is going to be of benefit to the people we assist. That will mean criticising and calling governments

of any colour and at any level to account. It may mean giving praise where it is due. It certainly means engaging within the political arena but not in the sense of taking a specific side.

**Senator FIERRAVANTI-WELLS**—Thank you, Dr Falzon. That was the point. In your answer there is clearly a scope that goes from lobbying to advocacy and then to partisan advocacy—to partisan taking sides, if I can put it in that way. Insofar as a not-for-profit or charity organisation takes a defined party political position and advocates, whether it is political endorsement or otherwise—if it is a charity that for a period of time may engage in some sort of clearly obvious political endorsement, whether it be of a political party or a political organisation—why should that component not be treated in the same way as if the organisation were a political party?

**Dr Falzon**—I would go back to my point, and I cannot speak—

**Senator FIERRAVANTI-WELLS**—That was the point that Senator Mason was making earlier.

**Dr Falzon**—I cannot speak for other organisations.

**Senator FIERRAVANTI-WELLS**—That is my point.

**Dr Falzon**—I can say that we are actively involved in ensuring that within Australia there is a very strong, robust civil society in which organisations and individuals can express an array of opinions and that they should in no way be silenced. Having said that, I would ask the question of an organisation, if it gave explicit support to a particular party's position on a particular policy. If I were in your shoes, so to speak, I would have to ask the question: is this authentically and organically related to the purpose of its existence as a charitable organisation? If there is an integral connection, I would say that there is an argument to suggest that it is able to put forward an opinion, not in the sense of saying, 'We are behind this party come what may, right or wrong; we are champions of this party,' but certainly to say, 'We favour this position as opposed to another position,' or, 'We find both positions flawed and here is a checklist as to how we would assess the positions of various parties on a particular social policy,' as against a set of criteria that are informed by the mission of that organisation, not because it wishes to take a partisan position per se.

**Senator FIERRAVANTI-WELLS**—So you are happy in the end if an organisation or a charity politically endorses one particular entity, one particular party or the other. You see that as falling wholly within its charitable purpose?

**Dr Falzon**—No, that is not what I said.

**Senator FIERRAVANTI-WELLS**—That is the question I am asking you. Insofar as your activity relates to political endorsement, should that component be quarantined and treated as separate from the rest of your charitable activities? That is the point. I am asking your opinion on that.

**Dr Falzon**—Yes. We would not place ourselves in a position where we would endorse a party. We would place ourselves in a position where we would take specific policies of any government, as I said, federal or state, and make commentary on those policies.

**Senator FIERRAVANTI-WELLS**—I accept that.

**Senator MASON**—You are a partisan for a cause, not a political party. Is that right?

**Dr Falzon**—Yes. I think that puts it well, Senator.

**CHAIR**—Thank you for coming in this afternoon and thank you for the evidence. It has been very helpful.

**Dr Falzon**—You mean it has to stop there. I was just enjoying it.

**Senator FIERRAVANTI-WELLS**—If you want to add anything else, Dr Falzon, I am sure that we will take it on notice.

[4.51 pm]

**MOOR, Mr David, President, Agricultural Societies Council of New South Wales**

*Evidence was taken via teleconference—*

**CHAIR**—We now have the Agricultural Societies Council of New South Wales, Mr David Moor, on the line by teleconference. Mr Moor, I am sorry but we now have an extremely curtailed schedule and we will not have the ability to talk to you for very long. We just want to give you the opportunity to give any extra comment on your submission, which we all have here.

**Mr Moor**—Thank you for the opportunity. The stuff-up was mine entirely; nobody else's. I thought that 28 October was on Thursday, so I will just have to wear that. As you can see, I am the President of the ASC, but I am also the President of the Federal Council of Agricultural Societies, which encompasses all the country shows in New South Wales—580 odd, I believe.

I have just been on a header, which is something that harvests wheat. Everybody else in my position involved with these country shows is entirely a volunteer. With regard to reporting or governance, we do not particularly wish to see any change within the rules simply because it eats into our valuable time. As a volunteer, that is part of our free time, part of our relaxation. I constantly have to deal with people saying to me that there is so much red tape and so much paperwork coming out of the ASC, but all of that is bombarded upon us by government instrumentalities. So with regard to any changes to the governance or reporting of charitable organisations, or in our case not-for-profit organisations, we are more than happy to have it stay the way it is. We report annually to the Department of Fair Trading with our figures. We also send our BAS statement to the ATO. The only other organisation that country shows have to report to is the Charitable Fundraising Act, if they wish to raise funds. But basically, we are more than happy with it to stay the same. We just could not handle too much more red tape.

**CHAIR**—Thank you, Mr Moor. Presumably, if there was no more red tape and the change involved less red tape and less difficulty for you, then it would not be such a problem.

**Mr Moor**—That is exactly right. We put in our submission in a bit of a hurry, but when I came back and thought about it, it was similar to the Liquor Act that Graham West pointed out to me. He said that it will not be any easier but it will be quicker. I guess that we do not have any say about how much easier it will be. Our point of view is that it cannot be much easier. Basically we just send our accounts off to the Department of Fair Trading and the ATO and that is it.

**CHAIR**—Thank you. We take your point. It is very interesting because mostly today we have had people giving qualified support to a national regulator, providing that it did not result in too much delay or bureaucratic red tape. They were giving support to a regulator particularly who might educate groups about disclosure and reporting requirements.

**Mr Moor**—My concern about going with a national regulator is how it will be funded. At the moment, there is no great funding to us. If you are going to start something up nationally, then

perhaps we should look at a form of taxation or something like that. I do not know. The concern with any change is that someone always has to pay for the change. The show movement is in a fairly desperate state with regard to finances, so we just could not see a way to find the extra money to do that.

**CHAIR**—Thank you, Mr Moor. That has been very useful. If you read through any of the submissions from today and would like to make some additional comments, we would certainly welcome them. Thank you for taking the time this afternoon.

**Mr Moor**—And once again, I do apologise for holding you up. It was entirely my fault.

**CHAIR**—We understand. We have all made similar mistakes.

[4.56 pm]

**FRASER, Mr Bede, Manager, Corporate Reporting and Accountability Unit, Corporations and Financial Services Division, Treasury**

**HACKETT, Mr Greg, Adviser, Governance and Insolvency Unit, Corporations and Financial Services Division, Treasury**

**MILLER, Mr Geoff, General Manager, Corporations and Financial Services Division, Treasury**

**PRESTON, Ms Kate, Manager, Governance and Insolvency Unit, Corporations and Financial Services Division, Treasury**

**RAM, Ms Ronita, Policy analyst, Corporations and Financial Services Division, Treasury**

**CHAIR**—Welcome. Thank you for coming in this afternoon. I remind members of the committee that the Senate has resolved that departmental officers shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions to superior officers or to a minister. The resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Mr Miller, do you wish to make an opening statement?

**Mr Miller**—Yes. Thank you, Chair. Thank you for giving us this opportunity to speak to our submission to the inquiry. Firstly, by way of background, the division that I look after—the Corporations and Financial Services Division—is broadly responsible for providing policy advice to the Australian government on corporate governance and financial reporting policy matters relating to companies under the Corporations Act. The Treasury's Personal and Retirement Income Division has primary responsibility for tax policy matters relating to the not-for-profit sector and they will be appearing before the committee tomorrow along with the Australian Taxation Office. I thought I should draw that line between the two different Treasury areas that will be appearing before you. I should also mention that throughout this discussion we will talk about not-for-profits. That includes charities. Whenever I talk about not-for-profits in our area, the corporations area, they are treated exactly the same. It will be different in the tax area, but for our area it is the same treatment.

Charities and not-for-profit organisations provide important and necessary services to the Australian community and to disadvantaged groups. ABS data indicate that in 2006-07 there were 41,000 not-for-profit organisations registered for an Australian Business Number, with an income of \$74.5 billion and employing 884,000 people. With diverse aims and objectives, these not-for-profit organisations are particularly involved with health, education, religion and cultural and sporting activities, and they play a key role in delivering services within the government's broader social inclusion policies. In doing so, these organisations engage with a number of stakeholders, including their members, donors, employees and volunteers, as well as the beneficiaries of their services, trade creditors, governments and the broader community.

The Treasury submission outlines the current framework for the market regulatory arrangements applying to the not-for-profit sector. Broadly, that framework attempts to promote public confidence and market integrity by ensuring that those organisations are responsive to their members, effectively deliver services to the community and are accountable in their use of funds from members, governments and the public.

In Australia, the not-for-profit organisations can make use of many operational structures to pursue their objectives. The Treasury submission focuses on incorporated not-for-profit structures. Responsibility for the market regulatory arrangements applying to incorporated not-for-profit structures is shared between the Commonwealth and the states and territories for constitutional reasons. We have estimated that there are 147,000 incorporated not-for-profit organisations in Australia, consisting of 11,000 public companies limited by guarantee, which operate under the Corporations Act and are registered with ASIC; 135,000 incorporated associations; and 1,800 cooperatives operating under the state and territory laws and are registered with state and territory regulators. These regulatory arrangements include a range of governance and disclosure obligations flowing from the not-for-profit's choice of structure, as well as licensing and disclosure requirements where they engage in public fundraising activities. Our submission contains a high-level description of the policy rationale for these requirements as well as summaries of the current arrangements.

From the Commonwealth's perspective, reforms to the governance and reporting requirements in the Corporations Act in recent years have applied to both profit and not-for-profit company structures registered under the Corporations Act. That being said, in 2007, the Treasury issued a discussion paper examining a range of possible reforms to the financial reporting requirements for unlisted public companies. A subset of these companies is the public company limited by guarantee, which, as I previously noted, is used almost predominantly by not-for-profit organisations. A key topic in this paper was the introduction of differential financial reporting thresholds for not-for-profit public guarantee companies, coupled with relief from auditing requirements for small not-for-profit organisations using this structure. This paper elicited submissions from a broad range of stakeholders, including auditors, not-for-profit organisations, professional bodies and stakeholder organisations. The Treasury has reviewed the submissions to this paper and is currently finalising reform proposals for the government's consideration.

From a governance perspective, the Treasury will soon commence an Australian Research Council funded linkage project with researchers from a range of universities, examining how our corporate governance regime might better support the performance of small corporations. The project will seek to identify particular governance concerns of small corporations and how these might best be addressed through regulatory and non-regulatory means. Governances issued and considered as part of this project are likely to be relevant for small, incorporated, not-for-profit organisations. Further, the government has announced that it intends to ask the Productivity Commission to examine the contributions of the not-for-profit sector to the economy. It is likely that this will include an examination of unnecessary and ineffective regulatory requirements and governance arrangements, and they are likely to consider options for improving funding, contractual and reporting arrangements with governments.

In conclusion, our submission canvasses a framework for the current market regulatory arrangements applying to the not-for-profit sector, responsibility for which is shared between the Commonwealth and the states and territories for constitutional reasons. Reforms to these

regulatory arrangements should reflect the evolution of the market in which these organisations operate and seek to maintain a balance between the need to promote public confidence and participation against the need to manage the associated costs to the not-for-profit organisations.

**Senator MASON**—I congratulate you on your submission. In particular, I found the features of the not-for-profit sector, on page 2 of the submission where you talk about how many people are employed, fascinating: heading up towards a million people, how much income they receive, expenses, volunteers and so forth. It is a great snapshot of the sector. The other day I was reading a list of suggestions from a certain commentator. He said:

All tax exemptions should be regarded as expenditure and put into budget outlays. That would give the public a better understanding of how much is given to the not-for-profit sector each year.

What concessions are given to the not-for-profit sector in terms of tax? We have heard of FBT rebates exemptions today. Or is this for the ATO tomorrow? If so, I will pursue it with them.

**Mr Miller**—Our revenue group colleagues from Treasury will be appearing with the ATO tomorrow, and they are the people to ask all the tax questions.

**Senator MASON**—In that case I will leave it there. I will not bother these gentlemen with that.

**Senator CAMERON**—If a company establishes itself as a manufacturing business and decides that all of its profits will be given to a third party and that third party is a charity, does that company then qualify for tax free status?

**Mr Miller**—Again, that is something that you will need to raise with our revenue group. The whole issue around what is a charity for tax purposes is within the Income Tax Assessment Act.

**Senator BUSHBY**—Senator Mason referred to page 2 of your report, where you set out some facts. What information sources have you used to put together that summary of value?

**Mr Miller**—I will pass that question to one of my colleagues.

**Mr Hackett**—Those figures are taken from an ABS data release that came out a couple of months ago. It was for the year 2006-07. As far as I am aware, it is the first one of the ABS data releases to look specifically at the not-for-profit sector.

**Senator BUSHBY**—Are you aware of what the ABS used to collect that data? Is it from a survey that they sent out, or is it based on Sensis data?

**Mr Hackett**—I believe it is based on Sensis data, but I would have to check the information in the data release.

**Senator BUSHBY**—That is interesting. I have read reports in newspapers about the number employed and the value of the income. This is consistent with what I have seen. Your report says 147,000 organisations. I have read other reports that talk of over 700,000 organisations that are not-for-profit. Maybe a lot of those are the smaller ones that are less than 150,000.

**Mr Hackett**—The estimated figure of 147,000 comes from registered incorporated structures. To put that figure together, we have looked at the number that are registered as public companies limited by guarantee under the Corporations Act and are registered with ASIC. We have also looked at the publicly available information from the state and territory regulators, specifically for incorporated associations and cooperatives.

**Senator BUSHBY**—On that basis, there could be many more not-for-profits that do not fall under those categories?

**Mr Hackett**—Yes. I would suggest that that figure might reflect unincorporated, trust or foundation structures.

**Senator BUSHBY**—Is this the right part of Treasury to ask about accounting standards and how they apply?

**Mr Miller**—It is.

**Senator BUSHBY**—How hard would it be to create a reporting standard or standards—and I know you touch on this in your submission—that could apply to the not-for-profit sector and/or the charitable sector in a way that would improve the ability of the public to examine their activities and understand what is being spent on what and where, and meaningfully compare across organisations? It is a big question.

**Mr Fraser**—I will not speak for the Australian Accounting Standards Board. I know they are scheduled to appear before the inquiry on Thursday, and I am sure they will give you an answer. Hopefully, I will give you a consistent answer now. Australia has adopted international financial reporting standards. Australia is one of 100 countries that have adopted IFRS. IFRS—international financial reporting standards—are primarily based for for-profit entities. The International Accounting Standards Board, which developed IFRS, is looking at developing a standard for private sector smaller entities. That work is ongoing and is due to finish in the first quarter of next year. When we see that standard, which will be developed for smaller sectors, smaller companies, that may be an appropriate base to use for any not-for-profit standard that we might want to adopt in Australia. We are still waiting to see what comes out of the International Accounting Standards Board in relation to that private sector standard.

**Senator BUSHBY**—Has there been any—

**Mr Fraser**—There have been exposure drafts and there has been a lot of comment on those exposure drafts right across the world with a view to maybe even further simplifying the requirements. We are expecting a further exposure draft in the first quarter of next year.

**Senator BUSHBY**—From what you know of the exposure drafts and the organisations that adopt those standards, would they enable a satisfactory comparison between different not-for-profits in terms of percentages of income spent on administration or delivery of services et cetera?

**Mr Fraser**—No. Arguably, the private entity standard that the International Accounting Standards Board is developing would be at a higher level than that. If we want to go down a

specific not-for-profit standard, which I think was your initial question, we might have to use the private entity standard as a basis and have specific disclosure requirements targeted at not-for-profit entities.

**Senator BUSHBY**—That is very useful. That will probably do me for the moment.

**Senator STEPHENS**—I found the information that you provided about international comparisons very useful and wondered whether you could comment on the decision by the UK government to develop two structures—the community interest companies and the charitable incorporated organisations—and their applicability to the Australian environment?

**CHAIR**—Can I ask a supplementary question: is there any difference between the cost of complying with an incorporated company compared to companies limited by guarantee?

**Mr Hackett**—I am not sure that I have the information to comment on the rationale for the UK government's enactment of those two structures.

**Senator STEPHENS**—I just meant in terms of their applicability to the Australian environment.

**Mr Hackett**—I suppose from our perspective, a charitable incorporated organisation does not exist in Australia. That would be a specific incorporated structure for charities alone. It would probably play into the consideration of this committee whether or not a specific incorporated structure for a charity is necessary. There are some subtle differences in the charitable incorporated structure in the UK that we do not necessarily have in the Australian Corporations Act. For example, these types of entities can be no liability, which means none of their members are required to contribute either initially or on winding up if there is a deficit—that is, if their creditors are owed money. We have a no liability company in Australia but it is generally only considered for for-profit and in the mining sector.

The other interesting component of that particular structure is that it is pretty much only required to report to the Charity Commission. It is not also required to report to the UK charities house, which has equivalent functions to ASIC. We would probably see that as a feature were it to be considered applicable to Australia. The key difference that I can see is in relation to the liability of the members. The community interest company—which is, I suppose, broadly their social enterprise structure—is, from our perspective, a way to accumulate capital and put that capital to a social enterprise.

An issue with the 'company limited by guarantee' structure is that it is not necessarily designed for contributions of large amounts of capital initially, before a charitable or not-for-profit organisation wishes to commence its operations. Generally, under the 'company limited by guarantee' structure, there is a yearly subscription—membership fees—which is generally quite small, as opposed to, perhaps, a commercial company with share capital, where subscriptions for shares generally receive a large amount of capital at the beginning. So, to compare the community interest company with the 'public company limited by guarantee' structure and also to an extent the incorporated association structure, I suppose there is probably a capital contribution issue at the beginning.

**CHAIR**—I will re-ask that question. With a company limited by guarantee, are the reporting and compliance costs less than for a company that does not have that structure?

**Mr Fraser**—I will answer for the reporting aspects, and there may be some separate governance issues which Mr Hackett might want to raise. The reporting requirements for companies limited by guarantees—the companies under the Corporations Act—are similar to the reporting requirements for for-profit companies. In effect, that means that companies have to prepare a financial statement in accordance with the accounting standards, have that financial statement audited by a registered company auditor and have it lodged with ASIC. I think that is more of a comprehensive approach than the approach adopted for incorporated associations, which varies across states and territories but usually involves a number of thresholds; at lower thresholds there may be minimal requirements. So, in terms of the reporting aspects, I think it would be fair to say that—

**CHAIR**—They are pretty much the same.

**Mr Fraser**—Yes.

**Mr Hackett**—In relation to the governance aspect of the compliance, we would suggest that incorporated associations face a lower compliance burden with the governance requirements in their particular state and territory acts. That is a very general observation. They have similar requirements with the appointment of directors or board members, and they have similar requirements to hold meetings for governance purposes, but we would suggest that companies registered under the Corporations Act probably have a higher compliance burden in comparison.

**Senator PRATT**—I note that your submission talks about the fact that the government may place financial reporting requirements on NFPs. You do not go into any detail about the implications of that in relation to arguments in this submission. Are there issues related to that that the committee needs to consider? It strikes me that, if regulation of charities starts to differ from what everyone else is obliged to do, it makes it very difficult for government agencies to compare like with like for contracts and the like, and you might put charities in a situation where they are having to duplicate the kinds of work that they are doing to meet different standards. Are these real concerns? Are there issues that the committee needs to investigate in relation to those matters?

**Mr Fraser**—The work that Treasury is doing is in relation to the companies limited by guarantee, so we are looking at the financial reporting obligations of those 11,000 entities. The discussion paper that we issued in June 2007 canvassed a range of issues, but the major issue was that we know that these entities are preparing full annual statements similar to those of for-profits, and the question we asked was: is that appropriate for all not-for-profits? The feedback we got from constituents was that some form of reporting was appropriate but that arguably, for the smaller not-for-profit companies, there might be an opportunity to look at a lesser form of differential reporting. I suppose they are the things that we are looking at in terms of briefing the government.

**Senator PRATT**—If, say, one of those smaller agencies is tendering for a government contract and it meets a different standard of financial auditing, could it possibly be

disadvantaged? How will you get a message out to every government department that is contracting out to those agencies that they no longer require that standard?

**Mr Miller**—It is similar. It is not just about contracting to government agencies; it is about getting credit in the market at all. What tends to happen, apart from accounting standards, is that whoever who is providing the credit will set their own rules as to what needs to be reported so that they can determine whether they will give you credit. If we had a lighter level of accounting standards for not-for-profits, or charities, it would then be up to the government as to who is tendering for jobs, or up to other banks or other creditors who might want to lend money to them, as to whether those standards—the reports that they are given under those lighter standards—are acceptable. If that is not the case and they need more, they have never in the past been shy in asking for more. It could be that a bank giving a loan to a charity might ask for more than they might provide in their accounts. Would they be discriminated against? I do not think so. I think that the people who are providing that credit or those tenders, if they had requirements for a higher level of reporting, would ask for that and the charities would then provide that.

**Senator PRATT**—It is quite hard work for small incorporated organisations to actually reach the level where they are able to put in for, say, a funding application or a grant application. It can take quite a few years to develop that, and they are denied access to those things if they do not meet that standard. That is currently absolutely the case. It would concern me if those bars change. I believe they would be discriminated against and I think that would need investigation. Thank you for your comment on that.

**Mr Hackett**—I would like to add to the answers. We have received some advice from the Department of Finance and Deregulation on the issue of administration of government grants. I think that is related to your question. The finance minister announced in February that his department would undertake a review of the administration of government grants. The review is currently awaiting government consideration. That would include grants that apply to not-for-profits as well.

**Senator PRATT**—That is useful for the committee to know.

**Senator FIERRAVANTI-WELLS**—Thank you for the statistics. I will ask the questions about the tax exemption and tax forgone tomorrow. Are you at all aware of the total number of organisations out there that come under the umbrella of ‘charity’? You have given us the statistics for the not-for-profit organisations—147; that is clearly broken down to companies limited by guarantee—and incorporated associations and cooperatives at the state level, which is roughly 136,000 and 11,000. They make up the figure of 147,000. Are you aware of the figure of 700,000 that Senator Bushby referred to before? Do we have a handle on that figure at all?

**Mr Hackett**—That figure was developed perhaps by the not-for-profit round table. I think I have seen it in reference to the not-for-profit round table, but I am not certain on that.

**Senator FIERRAVANTI-WELLS**—Let’s just say it is a large figure, assuming it is 700,000, just for argument’s sake. When you look at 147,000 of a potential 700,000, it is a relatively small number. Will the Productivity Commission inquiry that you were talking about look at that whole sector? Will it make some sort of investigation into the full ambit of the sector?

**Ms Preston**—We do not know the exact terms of reference that the Productivity Commission will look into, but we understand that they are currently being considered by the Assistant Treasurer for future clearance with state officials and at ministerial level.

**Senator FIERRAVANTI-WELLS**—Does that mean that there might be, as part of that, some form of standardisation of requirements? Is it envisaged that that would be part of it, if the states were involved? One only has to look at the tables that you have kindly provided to see the different requirements at the state levels for incorporated associations and cooperatives. You can see that there are different standards across Australia. Would the Productivity Commission consider some form of standardisation?

**Ms Preston**—It could, but I would not like to say. There is no statement as yet about how wide the terms will be.

**Senator FIERRAVANTI-WELLS**—Who is providing the input to the Productivity Commission to determine its terms of reference? Where is that emanating from?

**Mr Hackett**—The terms of reference are currently being considered by the officials of a number of departments and are to be put before the Assistant Treasurer.

**Senator FIERRAVANTI-WELLS**—Okay. Do we have any way of—

**Ms Preston**—It is still being worked up.

**Senator FIERRAVANTI-WELLS**—When is that working party likely to produce those terms?

**Ms Preston**—I think that the actual investigation is going to commence in March 2009.

**Mr Hackett**—I think it is mooted to commence in March but, again, that decision has not been made.

**Senator FIERRAVANTI-WELLS**—So in summary: at the moment we have got our Senate committee looking at this; the Productivity Commission is undertaking a reference on a range of issues—and perhaps you could provide some further information about that to us; and then we have got the Henry review, which is looking at this. How much overlap will there be, particularly with the reviews by the Productivity Commission and Mr Henry?

**Ms Preston**—There are a number of inquiries which, as you say, are going to take place or have currently commenced. One is the Productivity Commission inquiry, which we have just been talking about and which was the result of the government's pre-election commitment. We understand that they will examine the contributions of the not-for-profit sector with a focus on improving the measurement of its contributions and on removing obstacles to maximising the contribution of the sector to society.

The Henry review is already underway and encompasses a review of Australian government and state taxes except for the GST and interactions with the transfer system. There is going to be

an opportunity within that review for the not-for-profit sector to raise relevant issues with each of the panels that are conducting the reviews.

There are other inquiries as well, including this Senate economics committee inquiry, of course. There is the review of financial reporting for unlisted public companies that Bede Fraser talked about. The IASB—the International Accounting Standards Board—is working on simplified accounting standards aimed at meeting the financial reporting needs of entities that are not listed on the securities exchange. There is consultation taking place on the national compact and this will be a two-phase consultation process with the sector. The first phase, which is the initial exploratory phase, is currently underway. Finally, there is the strategic review of administration of government grants which Greg mentioned before. It is coming out of the Department of Finance and Deregulation. They are all the reviews that are currently getting underway, or have commenced.

**Senator FIERRAVANTI-WELLS**—In other words, most of this is next year?

**Ms Preston**—Yes.

**Senator FIERRAVANTI-WELLS**—Reporting next year?

**Ms Preston**—Yes, reporting next year. There are some reporting by the end of 2008—the review of financial reporting for unlisted companies—but mostly mid to end of 2009.

**Senator FIERRAVANTI-WELLS**—So, in effect, all that we are really doing here is potentially feeding into other reviews—is that for any recommendations of this committee? That is really a matter for us, I suppose, not for questions. Do you keep numbers for, or do an analysis of, incorporated associations that then may move and become companies limited by guarantee?

**Mr Hackett**—We are not aware of those figures. ASIC might keep them, but we are not sure.

**Senator FIERRAVANTI-WELLS**—Okay. Attachment A has the list of organisations that fall within those different categories. Do you keep the register, or does the ATO?

**Mr Hackett**—Attachment A relates to the ABS survey data, so the survey would have indicated which organisations are within that.

**Senator FIERRAVANTI-WELLS**—I appreciate that. My question is about the names of those various organisations that fall within each of those categories—who keeps that list?

**Mr Hackett**—As I said earlier, I am not sure. The ABS would have to look at the data release to see whether it was census data or specific surveys.

**Senator FIERRAVANTI-WELLS**—Presumably, the tax office would have the list?

**Ms Preston**—I think it is reasonable to assume that the tax office would keep those records.

**Senator FIERRAVANTI-WELLS**—You would keep statistics, but you do not actually have names. Thank you.

**CHAIR**—Thank you to Treasury for coming in this afternoon.

**Committee adjourned at 5.31 pm**