

Chapter 5

Regulation of the Sector

5.1 This Chapter identifies the arguments provided by contributors to the inquiry as to how the Sector should be regulated. It examines the advantages and disadvantages of a Commission, as currently exists in England and Wales and New Zealand, and weighs these against the advantages of the sector regulating itself through voluntary codes or standards. The Chapter also discusses the related topic of who should be subject to regulation: charities only, or all Not-For-Profit Organisations. The issue of whether a Commission should be independent or managed by government is also discussed, as is the potential funding source of such a regulator.

5.2 The committee notes that during the course of the Inquiry there was overwhelming support for the Sector to be better regulated in some way. Chapter 7 discusses the disadvantages of the current structures in which Not-For-Profit organisations operate, which includes an absence of regulation, or regulation inappropriate for the Sector.

Self-regulation

5.3 In addressing the issue of self-regulation of the Sector, the committee acknowledges the efforts of the Australian Council for International Development (ACFID) and the Fundraising Institute Australia (FIA), who have produced a Code of Conduct and Principles and Standards of Fundraising Practice respectively.

5.4 The Associations Forum, which describes ACFID's and FIA's codes as 'excellent', supports the use of codes to ensure Sector compliance:

One of the special features of the not-for-profit sector is its capacity for self-regulation, which has worked well in many professional and industry associations. Self-regulation can be democratic, effective and economical. Greater effort by the not-for-profit mutual sector to self regulate would be an excellent way forward, backed by government encouragement and minimal assistance and expenditure.¹

ACFID Code of Conduct

5.5 ACFID works in the field of international aid and development and is a national association of Australian non-government organisations. ACFID's Code of Conduct is a voluntary industry code for the overseas aid and development sector and has been in place for more than 10 years. It was implemented 'in order to strengthen

1 Associations Forum, *Submission 107*, p. 6.

the governance of the organisations in the sector and to enhance the confidence of the Australian public upon whom the sector relies for the greater portion of its funding'.²

5.6 ACFID has 86 member organisations, most of which are charities or Deductible Gift Recipients. ACFID signatories are required to comply with the Code, which:

...defines standards of governance, management, financial control, communications with the public and reporting with which NGDOs should comply. It identifies mechanisms to ensure accountability in NGDO use of public monies. The Code aims to maintain and enhance standards throughout the NGDO community, ensuring public confidence in the integrity of individuals and organisations comprising the NGDO community and the quality and effectiveness of NGDO programs.³

5.7 The advantage of the ACFID Code for members is that it can be used by organisations to measure and improve their operations, systems and guiding principles. ACFID has established a Code of Conduct Committee which regularly reviews the scope of the Code. The Committee also conducts seminars and workshops to educate members about the requirements of the Code, and how these are applied to the everyday activities of their operation.⁴

FIA Principles and Standards of Fundraising Practice

5.8 FIA is Australia's peak fundraising body. Its membership comprises both individuals and organisations. As with ACFID's Code, members of FIA are required to comply with the Principles and Standards, which were developed 'in response to FIA's perception of an urgent need to establish standards for professional fundraising in order to improve public trust and confidence in accountability for and transparency in the use of publicly donated funds'.⁵

5.9 The Principles are overarching codes that apply to all fundraisers, while the Standards address specific discipline of fundraising practice:

Principles of Fundraising Practice:

Code of Ethics and Professional Conduct

Fundraiser's Promise to Donors

Code of Acceptance and Refusal of Donations

FIA Complaints Process

2 Australian Council for International Development, *Submission 164*, p. 1.

3 Australian Council for International Development, *Submission 164*, p. 10.

4 Australian Council for International Development, *About the Code*, <http://www.acfid.asn.au/code-of-conduct/about-the-code> (accessed 7 November 2008).

5 Fundraising Institute Australia, *Submission 77*, p. 3.

Standards of Fundraising Practice:

Standard of Face to Face Fundraising

Standard of Charitable Telemarketing

Standard of Bequest Fundraising

Standard of Raffles, Lotteries and Games of Chance

Standard of Workplace Giving

Standard of Events

Standard of Fundraising from Grant Making Trusts and Foundations

Standard of Fundraising in Schools

Standard of Direct Mail

Standard of e-Fundraising

Standard of Diaspora Fundraising⁶

5.10 The role of the FIA Ethics Committee is to oversee complaints and enforce compliance among members. As with the ACFID Code of Conduct Committee, FIA is currently developing a national curriculum to ‘facilitate training on fundraising ethics and best practice’.⁷ FIA observes that the Victorian Government has endorsed its work in this area, and recommends that the codes be applied nationally.

5.11 Despite having their own respective codes, both ACFID and FIA indicate that that there is a place for a statutory regulatory body:

FIA sees closing this gap between statutory and non-statutory regulation as critical to maintaining public trust and confidence...⁸

ACFID recommends that...the proposed regulatory body should focus on supporting and educating small and emerging NFP entities to implement adequate governance structures and on providing education and support to its Directors and board members.⁹

6 Fundraising Institute Australia, *Overview of the FIA Codes Project Principles and Standards of Fundraising Practice*, http://www.fia.org.au/AM/Template.cfm?Section=Principles_and_Standards_of_Fundraising_Practice (accessed 7 November 2008).

7 Fundraising Institute Australia, *Overview of the FIA Codes Project Principles and Standards of Fundraising Practice*, http://www.fia.org.au/AM/Template.cfm?Section=Principles_and_Standards_of_Fundraising_Practice (accessed 7 November 2008).

8 Fundraising Institute Australia, *Submission 77*, p. 10.

9 Australian Council for International Development, *Submission 164*, p. 11.

Committee View

5.12 The committee congratulates ACFID and FIA on the comprehensive voluntary codes of conduct that they have developed. The codes are an indication that Not-For-Profit Organisations are aware that transparency is an issue within the Sector and many organisations in the sector take this responsibility seriously, determined to maintain their high reputation among the Australian public. This is evidenced by sector participation in the Australasian Reporting Awards¹⁰, the PricewaterhouseCoopers Transparency Awards that 'recognise the quality and transparency of reporting in the not-for-profit sector,'¹¹ and by the ACFID and FIA codes. The committee believes that there is a place for the ACFID and FIA codes within a new system of regulation.

Single National Regulator

5.13 Recommendation 25 of the 2001 Definition of Charities Inquiry recommended that 'Government seek the agreement of all State and Territory Governments to establish an independent administrative body for charities and related entities, and to the legislative changes necessary for its establishment'.¹² This recommendation has not been implemented to date, despite the successful implementation of Charities Commissions in countries comparable to Australia – England and Wales, and New Zealand.

5.14 One of the major advantages of having a single national regulator was that it would be a specialist body designed to meet the unique needs of Not-For-Profit Organisations in Australia. The committee was advised of the ramifications of failing to act in this respect:

Without national regulation of the sector our state based system will continue to create complexity that makes it difficult for not-for-profits to function efficiently and effectively.¹³

In the absence of a purpose built register populated with appropriate and regularly updated reports from all economically significant nonprofits, government departments seeking to contract or in other ways work with

10 Australasian Reporting Awards, *Welcome to the Australasian Reporting Awards*, <http://www.arawards.com.au/> (accessed 2 December 2008).

11 PricewaterhouseCoopers, *About the PwC Transparency Awards*, <http://www.pwc.com/extweb/aboutus.nsf/docid/B7895E8C1C53CC94CA2573330005A220> (accessed 26 November 2008).

12 Inquiry into the Definition of Charities and Related Organisations, *Summary of Recommendations*, http://www.cdi.gov.au/report/cdi_summaryofrecs.htm (accessed 7 November 2008).

13 Ms Katherine Keating, *Proof Committee Hansard*, 31 October 2008, p. 44.

nonprofits are forced to collect a great deal of information themselves, generating higher than necessary program management costs...¹⁴

5.15 This Inquiry has found that there is widespread support among stakeholders for a single national regulator, although many contributors provided some qualifications:

In principle our sector supports having a separate, independent regulator.¹⁵

Everybody is arguing for an independent regulator. How you define it, how you achieve that and how you guarantee it is another matter, but no-one is arguing for a captive regulator. Everybody wants an independent regulator because it is in our interests to have one.¹⁶

I think we are in favour of there being a central place where this is taken care of. However, the one caveat we would put is that we would love to see it being done in an efficient and effective way. Just to add another body for the sake of adding another body is really one more place these people have to go to and it is really far more complicating if it is yet another place that is totally unrelated to everything else.¹⁷

5.16 However, some contributors felt that other measures should be adopted before a national regulator is established. Dr Greg Ogle of The Wilderness Society and Ms Gina Anderson of Philanthropy Australia shared the opinion that a national regulator should not be the starting point of reform.

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.¹⁸

[W]e could spend a lot of time worrying about designing some wonderful big all-purpose vehicle that without the accounting standards, standard charter of accounts and some basic-level stuff that enhances transparency could be a waste of time.¹⁹

5.17 Also of concern to contributors was the related issues of the expense of a new regulator, and the implications of this:

14 Professor Mark Lyons, *Submission 67*, p. 8.

15 Ms Karen Mackay, Project Manager, Association of Neighbourhood Houses and Learning Centres, *Proof Committee Hansard*, 29 October 2008, p. 4.

16 Mr Michael Raper, Director of Services and International Operations, Australian Red Cross, *Proof Committee Hansard*, 30 October 2008, p. 49.

17 Ms Kathy Keele, Chief Executive Officer, Australia Council for the Arts, *Proof Committee Hansard*, 31 October 2008, p. 73.

18 Dr Greg Ogle, National Legal Coordinator, The Wilderness Society, *Proof Committee Hansard*, 28 October 2008, p. 11.

19 Ms Gina Anderson, Chief Executive Officer, Philanthropy Australia, *Proof Committee Hansard*, 29 October 2008, p. 45.

In a perfect environment this might be addressed by a having a single national regulator for the sector. Realistically, however, as we have indicated elsewhere in this submission, Australia's federal structure makes this difficult, and there would be a significant risk that a national regulator would become simply one more body to which a sometimes heavily regulated sector would be required to report, adding another layer of cost and technical complexity to organisations which typically find their resources badly stretched as it is.²⁰

[E]very 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.²¹

5.18 Despite these very real concerns, Professor Mark Lyons describes the danger to governments in not having a single national regulator:

- In the absence of a single regulator, governments lack data and knowledge of Australia's nonprofit organisations and are therefore unable to develop appropriate policies to better regulate them and encourage their formation; it is also unable to recognise when parts of the sector will be negatively, though unintentionally affected by other legislation;

...

- The absence of a single comprehensive and competent regulator encourages greater use of concessions available to nonprofit organisations for personal enrichment or to use these organisations for money laundering or to hide other criminal activities than would otherwise be the case;
- In a similar way the absence of a single register reduces the likelihood that the public will inform authorities of possible instances of abuse.²²

Who should be subject to the regulator?

5.19 An issue which divided contributors was the issue of whether a single national regulator should oversee only charities or all Not-For-Profit Organisations. There was general agreement that charities, which rely on public donations for much of their funding, should be more accountable and transparent than other Not-For-Profit Organisations, which are responsible only to their members:

[D]isclosure regimes should be separated for charities and not-for-profits as there is a much greater need for charities to be answerable to donors, where not-for-profits like us are answerable only to their members.²³

20 The Smith Family, *Submission 112*, p. 7.

21 Mr Bruce McKenzie, Aged Care Association of Australia, *Proof Committee Hansard*, 28 October 2008, p. 27.

22 Professor Mark Lyons, *Submission 67*, p. 8.

[W]e would be concerned to ensure that, if there is any such regulator, specific attention is paid to the charitable sector.²⁴

5.20 Within the subset of charities, charities with deductible gift recipient status were thought to warrant even higher regulation:

Charities that receive donations from the public and effectively receive donations from government by having a deductible gift recipient status have greater accountability to the public.²⁵

5.21 Overall, the committee heard that ‘a national regulator for the entire not-for-profit sector is preferred’²⁶ which ‘will ensure the boundaries between charities and other NFPs are well understood’.²⁷ The committee notes that a body which has the authority to make clear the distinction between charities and other Not-For-Profit Organisations in the minds of the general public would go a long way towards addressing the fears of some organisations, as stated in Chapter 2, that the public believes that all Not-For-Profit Organisations are charities.

5.22 Contributors made a link between a single national regulator and the role of a regulator in monitoring the financials of Not-For-Profit Organisations that have, to date, avoided regulation because of their small size.

Mr Sheehy—We are of the view that every not-for-profit should be subjected to minimum governance reporting requirements. In fact, Ms Fox and I were discussing it on the way over and I said, ‘You mean even the Balmain Tigers football club for my 12-year-old?’ and the answer is yes.

Ms Fox—We are not wanting to make it a hugely onerous compliance obligation, but even the local little sporting club should be able to say to the mums and dads: ‘These are the people who sit on the management committee. We raised \$6,000 through sausage sizzles and a chook raffle. We spent \$5,000 on some new soccer balls and some netting.’ It would be really important to know if any money was lent to anyone on that management committee, so any related-party transactions should be known. All of this could be on one page. It is just so that anyone dealing with any not-for-profit, regardless of size, has some basic information about who is the governing body; in other words, those making the decisions, and money

23 Mrs Noela MacLeod, Immediate Past President, Country Women's Association, *Proof Committee Hansard*, 30 October 2008, p. 65.

24 Mr Simon Miller, Special Projects Advisor, Legal, Risk and Governance, World Vision Australia, *Proof Committee Hansard*, 30 October 2008, p. 28.

25 Ms Regina Fickers, Partner, Pricewaterhouse Coopers, *Proof Committee Hansard*, 31 October 2008, p. 35.

26 CPA Australia, *Submission 98*, p. 5.

27 Pricewaterhouse Coopers, *Submission 61*, p. 8.

coming in and money going out. It would not be a detailed profit and loss statement, just some basic information...²⁸

5.23 The CPA Third Age Network Committee warned about capacity issues if all Not-For-Profit Organisations were required to provide financial accounts:

I suppose when you look across this 600,000-odd micro NFPs, the number of accountants that are going to be doing that is very small indeed. The total membership available from ICA and CPAA is likely to be 40,000, stretched full pelt, if they all went in and did this work.²⁹

The regulator

5.24 Those contributors in support of a single national regulator suggested that the regulator be either located in the Australian Securities and Investment Commission (ASIC), sit within the Australian Taxation Office (ATO), or be a body independent from government.

Australian Securities and Investments Commission (ASIC)

5.25 ASIC is an independent Australian Commonwealth body, established under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). It administers both the ASIC Act and the *Corporations Act 2001*. ASIC is Australia's corporate, markets and financial services regulator, which contributes:

...to Australia's economic reputation and wellbeing by ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers.³⁰

5.26 All Not-For-Profit Organisations that are companies limited by guarantee are currently subject to regulation by ASIC and familiar with ASIC's requirements. Among the advantages of having a Not-For-Profit Regulator located within ASIC would be that the regulator could then:

...share existing infrastructure and avoid duplication of knowledge resources such as directors' registers. The body should however have its own resources dedicated only to the NFP sector.³¹

5.27 Mr Peter Callaghan, of Community Employment Options Inc. agrees that ASIC is an appropriate body:

28 *Proof Committee Hansard*, 31 October 2008, p. 14

29 Mr Garry Bartlett, Chair, Voluntary and Honorary Work Subcommittee, CPA Australia Third Age Network, *Proof Committee Hansard*, 30 October 2008, p. 84.

30 Australian Securities and Investments Commission, *What we do*, <http://www.asic.gov.au/asic/asic.nsf/byheadline/Our+role?openDocument> (accessed 7 November 2008).

31 Pricewaterhouse Coopers, *Submission 61*, p. 9.

ASIC is the regulatory organisation for the country and so it seems to me that a unit within ASIC is probably more appropriate than establishing another regulatory environment in the community that adds to all the regulation that already exists.³²

5.28 However, the committee was informed by contributors that ASIC's focus was for-profit organisations, and would remain so.

[W]hen you talk about regulation, my experience, and the experience of my colleagues in the Law Council, is that neither ASIC nor the state and territory regulators have had the slightest interest in regulating the activities of not-for-profit organisations. If you look at the reported cases in this area, there is only one case of which I am aware where ASIC has taken a not-for-profit to court in relation to regulatory issues. It almost never happens in the case of the state and territory regulators.³³

It [ASIC] is unlikely to ever give the attention to the sector that the sector deserves and warrants, because it would always only be, if not a minor, certainly a subset of its main game, and the role that we seek for the independent regulator, independent commission or not-for-profit commission or whatever is one that does much more than simply help with the definition and the regulation, but that does provide the support, encouragement, back-up and education for the sector that has the needs across the country. I think that needs to come from an organisation that is dedicated to, and knows, the sector inside out, as business would seek for itself.³⁴

5.29 Professor Myles McGregor-Lowndes, Director of the Australian Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology argues that there is merit in the regulator being located within ASIC 'if a stand alone regulator was not an option'. He notes that:

ASIC already has significant computing and agency infrastructure to receive, process and retrieve for public consumption significant amounts of entity returns, efficiently and effectively. Consideration would have to be given to ensure ASIC's focus on its core functions did not lead to a neglect of its nonprofit regulatory function through a combination of alteration of its legal mandate and appropriate cultural management.³⁵

32 Mr Peter Callaghan, Chief Executive Officer, Community Employment Options Inc., *Proof Committee Hansard*, 18 July 2008, p. 5.

33 Mr A.D. Lang, Representative, Law Council of Australia, *Proof Committee Hansard*, 29 October 2008, p. 37.

34 Mr Michael Raper, Director of Services and International Operations, Australian Red Cross, *Proof Committee Hansard*, 30 October 2008, pp 49-50.

35 *Submission 27*, Attachment A, p. 1.

Australian Taxation Office (ATO)

5.30 The ATO is ‘the Government’s principal revenue collection agency, and is part of the Treasurer’s portfolio’.³⁶ Given that the ATO currently makes rulings about the eligibility of Not-For-Profit Organisations for tax deductions³⁷, the majority of contributors considered that the ATO was unsuitable to house a regulatory body because it would be considered a ‘conflict of interest’.³⁸

5.31 The committee notes that the role of the regulator would logically extend beyond taxation considerations, and agrees that the ATO is not well-positioned to undertake the role of a regulator.

Independent regulator

5.32 The majority of submitters who discussed a national regulator were in favour of a body that is independent from Government. The committee heard that:

Location within an existing institution is one solution, such as the ASIC or perhaps more suitably the ATO. However, such a situation would cause some concern about the independence of the body. Charities have a role in openly criticising government policy where it impacts on marginalised Australians. The Society is a strong advocate for marginalised Australians. The National Regulator should preferably be independent of government and subject to judicial review to avoid any conflict of interest or undue political interference.³⁹

Legislative issues

5.33 As discussed in Chapter 4, many Not-For-Profit Organisations are incorporated associations, and are, therefore, subject to state and territory legislation administered by the relevant state or territory government. (Further information on incorporated associations can be found in Chapter 7.) State and territory governments also have the responsibility of administering state and territory fundraising legislation. Professor Mark Lyons believes that the current system is inadequate because:

...we are now a century beyond six colonies and because there is no particular reason why states would want to continue in this field. It does not generate revenue for them. They commit almost no resources to it, so there

36 Australian Taxation Office, *About us*, http://www.ato.gov.au/corporate/pathway.asp?pc=001/001/002&mfp=001&mnu=39512#001_01_002 (accessed 7 November 2008).

37 Murray Baird in Debate, Issue 3, September 2008, also writes that ‘there are implicit conflicts in putting the Commissioner of Taxation at the gateway to charitable concessions’.

38 Ms Karen Mackay, Project Manager, Association of Neighbourhood Housing and Learning Centres, *Proof Committee Hansard*, 29 October 2008, p. 5.

39 St Vincent de Paul Society, *Submission 90*, p. 19.

is little public benefit from what they do. I argue that it should be standalone.⁴⁰

5.34 For a single national regulator to regulate Not-For-Profit Organisations, it must first have the power under law to do so. Chapters 7 and 9 examine the current state of Australian legislation relating to the legal structures and fundraising activities of Not-For-Profit Organisations. In those Chapters, the committee discusses the advantages and disadvantages of having legislative power vested in the states and territories versus vested in the Commonwealth Government.

Funding for a national regulator

5.35 The majority of contributors to this Inquiry did not address the issue of funding of a national regulator. The Charity Commission in England and Wales is funded by the government – this was at a cost of £33.5 million (about 0.002 per cent of UK GDP; the same proportion of Australian GDP would represent around \$25 million) in the year 2007/08.⁴¹ Mr John Peacock, of the Association Forum Ltd, believes that there are advantages associated with asking organisations to pay a fee to be registered:

One of the issues that the Senate economics committee should consider is whether we impose some sort of a charge for people if they are on it. That might help efficiencies. Organisations might say, ‘We have to pay this fee of a couple of thousand dollars to maintain our independence. Maybe we should merge with another two or three organisations instead of each having to pay these fees.’⁴²

The committee believes that very small or micro Not-For-Profit Organisations should be exempt from these fees.

5.36 PilchConnect suggested that the expense and ongoing resourcing of a new national regulator could be minimised by:

- exploring the use of the significant experience and resources of ASIC in on-line data collection, storage and searching, possibly in conjunction with a sector-managed resource...
- cost sharing with the States because of savings achieved by no longer needing separate regulators in each State and Territory
- cost savings achieved by fewer staff required in the ATO (their role will be to apply the revenue laws rather than having to determine eligibility), and

40 Professor Mark Lyons, *Proof Committee Hansard*, 29 October 2008, p. 61.

41 Charity Commission, *Annual Report 2007-08*, p. 14, <http://www.charitycommission.gov.uk/Library/spr/pdfs/annrep2008pt1.pdf> (accessed 8 November 2008).

42 Mr John Peacock, General Manager, Associations Forum Pty Ltd, *Proof Committee Hansard*, 31 October 2008, p. 59.

- cost savings to the NFP sector by a reduction in red tape and, therefore, greater capacity and efficiencies in delivery by NFPs of government / public funded services.⁴³

Committee View

5.37 The committee notes that the 2001 Inquiry concluded that:

The Committee's recommendations throughout this Report seek to provide options for enhancing the clarity and consistency of definitions within Commonwealth law and administrative practice. In our view, while the adoption of a new framework within Commonwealth areas of responsibility would produce worthwhile improvements, clarity and consistency could be further significantly improved by adopting a similar approach to definitions across all jurisdictions.

If the States continued to operate according to a different definitional regime, there would be added confusion within the sector and the community, and the administrative burden on charities and related entities could conceivably worsen.

The Committee therefore believes it is important that the Commonwealth seek the agreement of all State and Territory Governments to adopt a common framework for the definition of charities and related entities for use in all relevant legislation and administrative practice.⁴⁴

5.38 The committee agrees that the current environment for Not-For-Profit Organisations with multiple regulators is a concern and may put at risk the efficiency and effectiveness of the work of these organisations. Similarly, the committee is aware that transparency and accountability may be compromised by a complex regulatory system. The codes of conduct for self-regulation developed by ACFID and FIA are excellent starting points; however, as only members of the organisations are required to comply, there is still scope for abuse of the system or unintentional mismanagement by the other 700,000-odd Not-For-Profit Organisations operating in Australia.

5.39 The committee therefore endorses the recommendation that there be a single national regulator in Australia. The regulator should regulate both charities and other Not-For-Profit Organisations from its establishment. If the Sector is divided for the purpose of regulation, it risks losing its emerging status as a Sector in its own right, thereby weakening its force and bargaining power in its common goals of improved transparency and accountability.

5.40 All Not-For-Profit Organisations should be subject to the regulator regardless of size. In Chapter 10 the committee discusses ways to ensure that smaller Not-For-

43 PilchConnect, *Submission 129*, p. 6.

44 Inquiry into the Definition of Charities and Related Organisations, Summary of Recommendations, http://www.cdi.gov.au/report/cdi_summaryofrecs.htm (accessed 7 November 2008).

Profit Organisations are transparent through appropriate disclosure regimes and yet still accountable, without placing an unreasonable burden on them.

5.41 The committee notes the difficulties that will be associated with forming a national regulator, when much of the current legislation is administered through states and territories. Potential solutions to this issue are provided in upcoming Chapters.

5.42 There will continue to be debate over whose purview a national regulator should sit under. The committee is comfortable in rejecting the notion of the ATO as an appropriate body given that it was not established to have a regulatory function. Effectively, submitters to this Inquiry have called for a not-for-profit version of ASIC to govern the Sector. It may be argued that many Not-For-Profit Organisations already report to ASIC under the *Corporations Act 2001* and therefore there will be less disruption to the system if ASIC were to set up a Not-For-Profit unit to regulate the entire sector. After all, ASIC has expertise in regulating a vast number of organisations and has comprehensive systems in place to ensure its effectiveness.

5.43 However, ASIC's main role is in the regulation of the Business Sector, whose objectives and aims are vastly removed from those of Not-For-Profit Organisations. To take on the entirety of the Sector would require a culture change within the organisation. This would be aided by changing its name to reflect a broader role.

5.44 The committee prefers that the national regulator should be a new body. This will reinforce to the public the importance of the Sector to Australia's economy and social health and will be a visible reminder that the public can have confidence that the Sector is being well managed. The committee acknowledges that establishing a body independent from the established systems that are in place at ASIC will create additional expense. It is hoped that secondees from ASIC could assist in its establishment.

5.45 The committee is unable to make a firm recommendation as to how the system will be funded, but firstly believes that the suggestions provided by PichConnect should be explored. Secondly, the committee notes that ASIC's budget for 2008-09 is \$726 million.⁴⁵ Given the size of the Sector, it is not unreasonable to expect the Government to also support a Not-For-Profit regulator. As suggested by Mr Peacock of the Associations Forum Pty Ltd, charging a fee registering with the regulator may also be a way to share the cost of the body. However, very small and micro Not-For-Profit Organisations should be provided with an exemption to ensure their stability and on-going viability.

Recommendation 3

5.46 The committee recommends that there be a single independent national regulator for Not-For-Profit Organisations.

45 Budget, *Portfolio Budget Statements 2008-09*, no. 1.17, Treasury Portfolio, p. 130.