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Senate Economics Committee
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Dear Secretary

The Heart Foundation welcomes and supports the inquiry by the Senate Economics Committee into the disclosure regime for charities and not-for-profit organisations and is pleased to have the opportunity to make a brief submission.

In particular, we note the focus on:

- the relevance and appropriateness of current disclosure regimes for charities and not-for-profit organisations;
- models of regulation and legal forms that would improve governance and management 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.

The Heart Foundation strongly supports reform to the regulatory environment in which charities and not-for-profit organisations operate. In particular, the Heart Foundation calls for:

1. Creation of a single regulator for the charitable and not-for-profit sector across Australia with the goal of simplifying the existing, complex regulatory regime into a single, uniform system.

A single, national regulator should have the aim of providing appropriate regulation of the not-for-profit sector that:

- establishes a single disclosure/transparency arrangement that is straight-forward, fair and publicly accessible;
- eliminates unnecessary red tape;
- ensures regulation is proportional to risk;
- recognises and accommodates diversity;
- treats all charities equally;
- supports self-regulation where possible and appropriate;
- protects the right of charities to advocate; and
- provides support to charities to enhance performance.

If support for a single, national regulator is not forthcoming, the Heart Foundation calls for:

2. Harmonisation of all state, territory and federal legislation governing the operation and registration of charities and not-for-profit organisations.
3. Review and reduction of unnecessary red tape on charities and the not-for-profit sector, particularly for organisations operating across more than one jurisdiction.
4. Creation of an Australian Fundraising Standards Board – along the lines of Britain’s National Fundraising Standards Board – to:
 - establish clear and consistent standards of accountability and reporting for charities and not-for-profit organisations;
 - provide support and assistance to enhance the efficiency and performance of charities;
 - enhance transparency and provide donors with a single reference point to assess whether or not a charity may be conforming with the high standards set by the Board;
 - monitor and report progress towards harmonisation of regulations applying to the not-for-profit sector; and
 - create procedures for hearing and acting on complaints from members of the public.
5. Development of uniform accounting standards for the non-government sector across Australia.
6. Measures to protect the legitimate right of charities and not-for-profit organisations to take part in advocacy and public debate.

Importance of the sector

The charitable/not-for-profit sector is a large one with some 41,000 registered not-for-profit organisations operating in Australia in 2006-07 employing 880,000 people. Collectively, these organisations had an income of \$74.5bn (2006-07). Some 34% of revenue was from government sources (federal, state/territory and local), and 9% from donations and sponsorships¹. In the case of the Heart Foundation, almost 90% of our income comes from public donations.

The charities and not-for-profit sector is of vital importance to the health and well-being of the Australian community. For example, the Heart Foundation is the nation’s largest non-government funder of cardiovascular research. Our research program has provided more than \$177m for research into cardiovascular disease since 1959 and this year alone provided funding of more than \$12m to support quality research into the cause, diagnosis, treatment and prevention of Australia’s biggest killer.

The very significant benefits delivered to the community by the charitable and not-for-profit sector should be further enhanced through appropriate reform of the regulatory environment that enhances accountability while reducing complexity and red tape.

Additional efforts should also be made to examine ways to reduce tax and other regulatory burdens on charities - organisations that exist to serve the public good and whose services often save the public purse from significant additional expenditure.

¹ ABS Not-For-Profit Organisations, Australia, 2008

Support for reform

The Heart Foundation supports the two reform challenges articulated by the Parliamentary Secretary for Social Inclusion and the Voluntary Sector, Senator Ursula Stephens, viz:

... strengthening public confidence in the not-for-profit sector and celebrating its achievements through strengthening accountability mechanisms and reducing the burden imposed on the sector of unnecessary red tape².

There is a pressing case for rationalising the many hundreds of laws and regulations that apply to operation and activities of charities and non-for-profit organisations, many of them making for unnecessary complexity and sometimes deterring charities from undertaking certain legitimate fundraising activities, denying them access to important sources of funding.

The Heart Foundation also acknowledges the need for all charities and not-for-profit organisations to be transparent and accountable to those who so generously support our important and – as is the case for many charities operating in the health sector - life-saving work.

This is best achieved through a single, simple and public disclosure arrangement that is developed with the charitable and not-for-profit sector.

Senator Stephens has also recognised the strength and importance of the sector, saying that *“it is not-for-profit organisations that are often best placed to address the needs, and advocate on behalf of, the most vulnerable in our society. They are often the most nimble early adapters of new ideas and solutions to changing community needs”³.*

In pursuing reform, we must ensure we don't throw the baby out with the bath water. Reform must improve the ability of charities to pursue the public good. Any new regime must enhance and improve the performance of charities and not simply swap a large number of cumbersome and complex regulations for a smaller number of equally restrictive laws.

The Heart Foundation also believes that all charities should be treated equally and that disclosure provisions and other requirements, such as requirements regarding accounting standards, apply across the board, thus creating a level playing field for fundraising organisations.

The case for a single national regulator

The current regulatory environment applying to the charitable and not-for-profit sector is unnecessarily complex. This has the impact of stifling, rather than enhancing the work of the charitable/not-for-profit sector.

The existing mishmash of regulation within and across jurisdictions imposes a significant financial cost on charities and not-for-profit organisations. It has been estimated that – based on Victorian research – excessive and unnecessary regulation costs the sector around \$100m a year⁴.

The National Roundtable of Non-profit Organisations has also estimated that there are no less than 93 state and federal agencies that can make determinations about an organisation's charitable status.

A single, national regulator should operate and apply – as far as possible – a single set of national laws governing the operation and reporting requirements of all Australian charities and not-for-profit organisations.

² Senator Ursula Stephens, Parliamentary Secretary for Social Inclusion and the Voluntary Sector, April 17, 2008 – address to the PricewaterhouseCoopers Transparency Awards. The Heart Foundation participates in these awards.

³ Senator Ursula Stephens, Parliamentary Secretary for Social Inclusion and the Voluntary Sector, April 17, 2008 – address to the PricewaterhouseCoopers Transparency Awards.

⁴ National Roundtable of Nonprofit Organisations, August 29, 2008. Extrapolation of estimates from the Allen Consulting Group Report prepared for the Victorian Government

In particular, regulations that inhibit, rather than enhance the operations of charities need to be reviewed.

A single regulator should also be well-placed to apply the principle of 'light-touch' regulation. This should facilitate and encourage self-regulation where appropriate, and where regulation is needed, it should ensure it is proportional to risk.

The Charities Commission (operating in England and Wales), is regarded by many as a sound model for Australia. It undertakes the following roles:

- registration of charities;
- ensuring compliance with relevant legislation;
- encouragement of innovation and effectiveness within the sector;
- supporting charities to meet legal requirements and improve performance; and
- promoting public confidence / support for charity.

The Commission is charged with ensuring that charities fulfil their legislative obligation to operate for the public benefit and independently of government or commercial interests. It reports directly to Parliament, not the UK Government.

It aims to increase efficiency, effectiveness, public confidence and trust in charities. Charities with yearly incomes over £10,000 must by law submit their accounts and formally report to the Commission every year within 10 months of the end of their financial year. The accounts and reports are made public and are widely accessible via the internet.

The reporting requirements assist the public to learn more about individual charities and are also used by the Commission to identify areas where it can assist charities improve performance. The Commission lists charities that seriously fail to meet reporting requirements on its web-based defaulting charities 'finder facility'.

Importantly, the Commission provides advice and guidance to 24,000 charities and their trustees/directors each year. The Commission also has wide powers, enabling it to impose 'schemes' or 'orders' on charities to improve their performance. These schemes can modernise or widen the objects of a charity to allow its income to be applied more effectively for its beneficiaries; amalgamate charities which leads to savings in administrative costs and a more effective use of charitable funds; replace a governing document that is inadequate or out of date with modern administrative provisions that enable trustees to administer their charity more effectively; give trustees new powers or authorise specific transactions which are in the best interests of the charity.

The Commission also publishes regulatory reports, which benchmark the performance of charities in selected areas, such as charities and the environment, charities and beneficiaries. These highlight good practice to help charities improve their own performances and learn lessons from others.

It also has powers to investigate any acts of deliberate fraud or dishonesty within charities. The priority is to ensure the charity can get 'back on track' to carry out its work.

It is important to remember that the Commission is not the only body regulating charities in England and Wales, and its work is complemented by other regulators, including Inland Revenue and the Housing Corporation. The British Charities Act of 2006 provided a new definition of the requirements to qualify as a charity, established a charity tribunal to hear appeals from decisions of the Charity Commission and altered the requirements for registering charities. The comprehensive - rather than piecemeal - approach to the reform of the charitable sector is to be commended.

The case for self-regulation

The Heart Foundation supports the case for the development of an Australian 'Fundraising Standards Board', similar to that operating in the UK. The Board is a self-regulatory body for fundraising in the UK with more than 800 member charities.

In the absence of a single, national regulator in Australia, the introduction of a fund raising standards board, funded by government, would be a prudent move, particularly if it was introduced in conjunction with harmonisation of regulation applying to the charitable/not-for-profit sector across all jurisdictions.

The UK Fundraising Standards Board is a new innovation, established with government funding for the first five years. It will become self-funded after this time.

With the aim of enhancing public confidence in fundraising and ensuring appropriate accountability and transparency, member charities must adhere to the Institute of Fundraising's 'Codes of Fundraising Practice' and the Fundraising Standards Board's 'Fundraising Promise'.

The Codes of Fundraising Practice set out standards for fundraisers in the UK with codes covering separate fundraising techniques, providing practical guidance and legal advice, and information on how to ensure and safeguard excellence.

The Board's 'Fundraising Promise' sets out six 'pledges' that focus on the principles of respect, honesty, accountability and transparency. By agreeing to abide by the Fundraising Promise, charities provide a commitment to the highest standards of good practice, and to ensuring that all fundraising activities are open, legal and fair.

The system is backed up by a self-regulatory scheme – established after wide consultation – which deals with public complaints about fundraising activity. It is also intended to help the public give with confidence to member charities.

Charities and organisations that display the scheme's logo are demonstrating that they have signed up to the highest fundraising standards.

For example, members of the Fundraising Standards Board scheme must:

- Adhere to the Institute of Fundraising's Codes of Fundraising Practice and the Fundraising Promise, which together represent the highest standards of good practice in fundraising.
- Have procedures in place to deal with public complaints. They should also offer a complaints 'safety net', whereby members of the public can contact the Board if they are not satisfied with the charity's response.
- Demonstrate that they are members of the Fundraising Standards Board scheme by displaying the scheme logo on their fundraising materials.

The 12 members of the Fundraising Standards Board are responsible for making final adjudications on public complaints about fundraising. In order to represent a balance of interests, the Board members include representatives from the voluntary, consumer protection and charity law sectors, plus five lay Board members.

The Fundraising Standards Board's operational team consists of just six members of staff and a chief executive. The cost of running the Charities Commission is about \$60m a year.

The need to protect the right of charities to advocate for their cause

The Heart Foundation believes that there is a need to protect the ability of charities to speak out and engage in public debate – should they choose to do so – and completely rejects the idea that this important function should be regulated or controlled beyond the laws that currently apply to public speech.

The Heart Foundation strongly supports the need for all charities to be accountable to their donors, whether individual members of the public, companies, philanthropic entities or governments and their agencies. At the same time, the Heart Foundation rejects the notion that advocacy/lobbying by charities is at odds with the donating public's expectations of charities. Advocacy is often, by its very nature, a public activity, and is, therefore, abundantly apparent to the public. This is particularly true where charities challenge government on particular policy issues.

The Institute of Public Affairs has advanced the generalised view that:

Australian donors do not know if their investment in altruism is wise. They do not have the information to judge whether their donations are put to best use. Measures of performance are available for investors in the corporate sector, and for voters in the government sector. They should be available for donors who support the charity sector.⁵

It argued that the key principle of charity reform is whether charities inform their donors sufficiently well of their activities. In advocating for a stronger disclosure regime, the Institute also questions the use of advocacy/lobbying by charities as a legitimate means of achieving their stated mission.

The Heart Foundation believes that it is important for charities to disclose to its donors the advocacy activities they undertake. But it would be the exceptional charity that advocates for its cause – whether it's ending poverty or ending heart disease – without advertising the fact to the public. Advocacy – by its very nature – is a public undertaking.

About the Heart Foundation

The Heart Foundation was founded in 1959. Its mission, stated succinctly is: "To improve the cardiovascular health of all Australians and to reduce disability and death from heart disease and stroke." With heart, stroke and vascular disease (cardiovascular disease) still accounting for 34% of all deaths in Australia and almost 20% of the total burden of disease and injury, our work is far from done.

The Heart Foundation is a federation of related entities operating together under the provisions of a Memorandum of Understanding. Those entities are:

- the National Heart Foundation of Australia (the "national company"), a company registered under the Corporations Act 2001; and
- the separate Heart Foundation entities operating in each of the states and territories of Australia. Of the eight state member Foundations, four are companies incorporated under state law, three are associations incorporated under state law and one is a company registered under the Corporations Act.

The national company's annual reports and audited financial statements are published each year.

The Heart Foundation's income is drawn almost entirely from public donations and bequests. This income is used to pursue our mission of reducing suffering and death from heart, stroke and blood vessel disease. We aim to achieve these through:

Research: The Heart Foundation research program has provided more than \$177m for research into cardiovascular disease since 1959 and this year is providing funding of more than \$12m to support quality research into the cause, diagnosis, treatment and prevention of Australia's biggest killer.

Supporting and informing: Comprehensive information and guidance on how to minimise risk is developed and disseminated to help people with, and at risk of, cardiovascular disease.

⁵ Johns G, *Charities Reform in Australia*, Agenda, Vol 11, No 4, 2004

Partnerships: The Heart Foundation supports and works with all levels of government, other health organisations, the media and community groups to implement policies and programs that improve the cardiovascular health of Australians.

Improving care: To ensure that people diagnosed with cardiovascular disease receive the best possible care, the Heart Foundation assesses the latest research and creates practical treatment tools, such as clinical guidelines, for health practitioners. The Heart Foundation's vision is for Australians to have the best cardiovascular health in the world, regardless of their income, heritage or address. The Heart Foundation works to bridge gaps in care and treatment through programs specifically targeting those Australians at higher risk of cardiovascular disease.

Programs: The Heart Foundation runs a number of programs, such as Heart Foundation *Walking* and *Heartmoves* that help Australians improve their cardiovascular health.

Building healthy communities: The Heart Foundation works with local government and planners to change neighbourhoods to create healthier communities.

Promoting awareness: Through community education campaigns and media activities, the Heart Foundation promotes lifestyle changes to improve the heart health of Australians.

Advocacy: The Heart Foundation works with governments across Australia to promote actions and programs that will improve the cardiovascular health of all Australians.

Summary

Given the complexity of the reform process and the issues involved, the Senate Economics Committee may consider it prudent to recommend that the Australian Government undertake a full review of the legislative environment applying to the charitable and not-for-profit sector in Australia. This may best be done by a commission which includes representatives from the sector, from both federal and state government as well as others with relevant expertise.

This would allow the broad range of complex issues to be fully assessed. It is worth taking time to get the reform process right and also increase the chances of securing a comprehensive and cohesive new regulatory environment, rather than piecemeal reform which may not serve the best interests of the public or the sector.

We wish you well with your deliberations and would be keen to assist with any inquiries you may have.

Yours sincerely



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