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21 August 2008

The Secretary  
Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Secretary

### **Inquiry into the Disclosure Regimes for Charities and Not-for-profit Organisations**

We appreciate this opportunity to make a submission to your inquiry.

The Australian Evangelical Alliance Inc is a fellowship of well over 600 Australian churches, organisations and individuals. It is a catalyst for Christian unity, cooperation and mission across the evangelical community within Australia. Its mission is to serve the Christian community by:

- linking people and networks in strategic partnerships;
- stimulating and communicating biblical thinking in church and society about contemporary issues;
- providing services to optimise the use of resources;
- encouraging and supporting innovative ministries; and
- giving voice to Christian concerns

One of our most active arms is Missions Interlink – a network of 140+ mission agencies which exists to link, support and train those who are interested in cross-cultural missions. This means linking mission agencies, training providers (colleges), service agencies, individuals and churches together in order to help advance the work of Global mission. Missions Interlink is not a mission agency and it doesn't send anyone overseas. It is the peak body representing cross-cultural mission organisations within Australia.

The following is a submission prepared on behalf of both of these organisations - Australian Evangelical Alliance and Missions Interlink .

Yours faithfully

Tom Slater  
National Director  
Evangelical Alliance

Pam Thyer  
National Director  
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**AUSTRALIAN EVANGELICAL ALLIANCE INC.**  
**ABN 54 056 007 820**  
**and**  
**MISSIONS INTERLINK**

**Submission to the Senate Standing Committee on Economics  
Inquiry into the Disclosure Regimes  
for Charities and Not-for-Profit Organisations**

**August 2008**

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## **THE NOT-FOR-PROFIT SECTOR IN AUSTRALIA**

NFP organisations are primarily formed by people to provide services for others, to advance a cause, to share an enthusiasm, to preserve a tradition, to worship a God. Different groups of these organisations are known by different names – charities, cooperatives, clubs, associations, churches, temples, mosques, unions and so on. Collectively they comprise what is often referred to as the third sector – government sector and private sector being the other two sectors.

They see they have a role to contribute to the community in many valuable and practical ways. Some examples of this would be by providing valuable community resources like sporting facilities as well as centres for people to gather in like places of worship and community halls. In fact many of the programs these organisations run are based from these facilities.

NFPs also provide a wide range of community services such as aged care, education, counselling support, practical support for people with disabilities as well as other groups within the community. This forms a valuable part of our society today and needs to be given due recognition.

There is a significant difference between the size, shape and diversity of the many organisations that comprise this third sector. They operate in many differing areas – education, health, arts and culture, religion, sport, welfare, environment and so on. The type of organisation also ranges from clubs and social or community associations through philanthropic trusts, foundations and charities and on to very large national organisations and in some cases multinational organisations.

Thus there are many differences across NFPs – difference in size, in activities, in the resources they consume. Yet they share some fundamental similarity – an expression of a collective action for the benefit of others.

### **What has stimulated this Inquiry?**

When people and the media express their concerns regarding the not-for-profit sector, what particular areas of the sector are they actually referring to? For example, within the CHOICE article in March 2008 referred to by the Senate Committee<sup>1</sup> background paper, the focus seems to be on a particular segment of the sector. Closer examination of their survey reveals a focus on the larger national charity sector group – like World Vision, Oxfam, Red Cross, CARE Australia, Mission Australia, etc. The article fails to recognise that these larger national charities are significantly different from the smaller charities and other not-for-profits organisations which make up the sector.

### **Diversity of the Sector**

To further illustrate this point, it is worth noting the diversity of the sector which was shown through the public hearing of the Senate Committee which was held in Rockhampton on Friday 18 July 2008. The three organisations that participated at the hearing were quite different from the groups which the CHOICE article made reference to. One of those groups was operating purely through voluntary membership and relying completely on donations. Another had limited “essential” paid staff to ensure maximum funds go through to the services they provided and was funded primarily through Government grants, often with obligations tied to that funding, as well as specific reporting requirements.

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<sup>1</sup> Senate Standing Committee on Economics

Former Senator Andrew Murray has acknowledged that the NFP sector also “includes small voluntary organisations which do not receive government subsidies and which are run exclusively on donations from a small group of people and service the needs of other small groups”.<sup>2</sup>

## **THE SENATE INQUIRY**

In researching the background to this Inquiry, time has been spent reading many of the various inquiries and investigations into charities that have occurred over the past decade or so. These have proven to be quite insightful into the many and varied issues which tend to compound this whole area of the regulation of the charity and not-for-profit sector in Australia.

Through this reading, it should be noted that on many occasions there seems to be a continual uncertainty as to what part of the sector the inquiries are relating to. The terms which have been used include “charity”; “non-profit organisations”; “social economy network”; “Community Service Welfare Organisations” and many more. This highlights clearly the difficulty in making any clear general statements about the third sector as a group.

During our reading it was noted that there have been a number of concerns expressed about the way in which the not-for-profit sector operates in Australia. These include:

- A lack of transparency about the way in which public or donated funds are spent; and
- A lack of accountability, despite the fact that the not-for-profit sector is a major provider of services to the public.

Both of these areas were raised by the CHOICE article back in March 2008 though the evidence provided by them to justify their statements were quite scant to say the least. It is our opinion that broad general statements, such as those contained in the article, don't add to a discussion in themselves. In our view, the article does not represent an accurate picture of how the great majority of NFP organisations actually work. It is also questionable as to whether it represents the true picture of the heart of what the average Australian citizen actually thinks about how NFPs function in this country.

It was interesting to note the reply of Ms James to Senator Furner's questions on this matter in the public hearing in Rockhampton on 18 July 2008 – “I think it is important for our organisation to go out there and just let them know that that is not the case and that most of us work as volunteers and that we do most of the work outside our office hours. We work on the weekend.”<sup>3</sup>

Karen Spindler believes that good reporting underpin transparency and accountability. But reporting is also costly and “can be a drain on the not-for-profit sector's limited resources. The trade off between the need for transparency and accountability on one hand, and the costs associated with reporting on the other hand, is therefore acute in the not-for-profit context”.<sup>4</sup>

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<sup>2</sup> Murray, Andrew, *One Regulator One System One Law*, July 2006, p10

<sup>3</sup> Transcript – Senate Committee Public Hearing in Rockhampton, Friday, 18 July 2008, p 12

<sup>4</sup> Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 21

## **CURRENT MODELS OF REGULATION**

At present there are more than 20 different ways to incorporate a not-for-profit organisation in Australia. This variety is a product of both a variety of specialist forms for incorporation (eg for trade unions, parents associations), and the existence of a dual state/federal regime.<sup>5</sup>

The three most common are:

- [1] A company limited by guarantee under the Corporations Act;
- [2] An incorporated association under State and Territory law; and
- [3] A cooperative.

In some respects a company limited by guarantee structure under the Corporations Act is suited to the needs of a not-for-profit organisation. These companies have members (guarantors) rather than shareholders, and their liability should the company wind up is limited to the amount specified in the company's constitution. This is usually less than \$100. However, incorporating under the Corporations Act fails to fully meet the needs of the not-for-profit sector. This is due in a large part to these companies needing to comply with accounting and other reporting standards which are more relevant to commercial enterprises.

The most applicable alternative pathways to incorporation are by way of the Association Incorporation Acts of State and Territory jurisdictions. These allow for the establishment of a not-for-profit organisation as an incorporated entity but demand less administrative effort and expense, especially for smaller organisations. They have the ability to enter contracts, and the power to acquire, hold and dispose of property. But the problem here is that they are state based and therefore for many national or multi-state organisations it is not the best way to operate. (Such a body may of course register as a Registrable Australian Body, which enables an association incorporated in one state/territory to operate nationally. However that is the only advantage that facility bestows and it does not overcome the shortcomings of the existing mechanisms for incorporation – if anything the fact of its existence reinforces the need for a more appropriate national incorporation mechanism for the sector.)

“Neither the Corporations Act nor the Association Incorporation Acts — the two most applicable mechanisms — offer a means of *incorporation* that meets all the needs of the not-for-profit sector. In some senses, there is a ‘misfit’ between the nature of not-for-profit organisations and the incorporation vehicles available to them”.<sup>6</sup> Also neither provides enough tools and resources to assist organisations with the practicalities of establishing under their laws.

One of the shortcomings of the ‘association option’ is that in recent times some states have place restrictions on some community groups which have sought to take up this alternative to the Corporations Act. For example the Office of Fair Trading in the state of New South Wales will not allow an entity with revenue over a certain threshold to incorporate as an association.

Another shortcoming is the requirement by most state jurisdictions for many associations to undertake the cost of a relatively expensive annual statutory audit – where a review by a qualified accountant would, in many cases, be more than adequate.

### **Smaller Organisations**

We urge your Committee to take account of smaller organisations when making proposals to reform the sector. In particular we are concerned that the end result should include differentiation between the scale and nature of the spectrum of NFPs – ranging from say World Vision to a church parent-run playgroup that has to incorporate solely to be able to get association liability insurance cover.

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<sup>5</sup> National Roundtable Of Non-Profit Associations, *Non-Profit Regulation Reform Program*, 2004, p2

<sup>6</sup> Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p vi

## **ARE CURRENT DISCLOSURE REGIMES FOR NFPs ADEQUATE?**

It is good practice for all NFPs to be held accountable in their use of funds, seeking to have them meet a set of standard accounting requirements. Also the disclosure of how donated funds are used would continue to help grow the trust levels within the community.

But just what type of accounting standard and level of disclosure would be required may be different for different groups within the sector. Is current practice adequate? We think not.

### **What is adequate for one might not be adequate for another**

One key issue here might be, in the light of current practice, what level of accountable and disclosure is considered “adequate”? Currently financial reports for many NFPs must be prepared in accordance with accounting standards that are broadly similar to those used by for-profit corporations – namely international financial reporting standards, promulgated by the AASB<sup>7</sup>. The problem is that those standards may not be the best for the NFP sector. They have tended to lack “strategic consideration of what should be reported by incorporated not-for-profit organisations and why...Reports elicit limited information on several key measures and hinder comparisons of performance across the not-for-profit sector”<sup>8</sup>. Over recent years, reports into the NFP by Australia’s two major accounting bodies [CPAA and ICAA<sup>9</sup>] have reached the same conclusion. Even the AASB itself has been forced to modify quite a number of Australian/international financial reporting standards to try and fit the NFP sector, without much success thus far.

To date there are no specific or consolidated accounting standards published by the AASB to which not-for-profit organisations or their auditors may refer in preparing accounts. Deficiencies in this approach have been well documented. The Industry Commission outlined several in 1995: “Current standards, for example, give inadequate guidance in relation to the classification and recording of: valuation of donated goods; depreciation of gifted assets; treatment of bequests; capital grant funding; capital replacement provisions; and maintenance reserves.”<sup>10</sup>

Another common problem for many not-for-profits is that reporting requirements and procedures across government agencies are rarely aligned. This increases costs not only for the organisation, but also for the government and the community. The Charities Definition Inquiry recognised the burden imposed by these practices and called for greater consistency in reporting demands. “From the sector’s point of view, there should also be scope to develop a common framework of reporting requirements that could meet the needs of all relevant government agencies, and thus reduce the administrative burden associated with complying with the current diverse reporting requirements.”<sup>11</sup>

A further key issue could be – should the Senate Committee advocate a standard level of disclosure for all NFPs – or can there be various levels, depending on the size of the organisation? Former Senator Andrew Murray states that there is not the same need for small NFPs to “have the advanced integrity, record-keeping, accounting and reporting measures that larger organisations require”.<sup>12</sup>

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<sup>7</sup> AASB = Australian Accounting Standards Board

<sup>8</sup> Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 24

<sup>9</sup> CPAA CPA Australia ICAA Institute of Chartered Accountants in Australia

<sup>10</sup> Industry Commission 1995, *Charitable Organisations in Australia*, Report No. 45, Australian Government Publishing Service, Melbourne, p. 214-15

<sup>11</sup> Charities Definition Inquiry 2001, *Report of the Inquiry*, Canberra, p. 293

<sup>12</sup> Murray, Andrew, *A Proposal For Simplifying The Legal Form And Regulation Of Small For-Profit And Not-For-Profit Entities*, April 2008, p2

## **DOES THE NFP SECTOR NEED REGULATORY REFORM?**

In our view the answer is YES – and it should apply right across the third sector.

All parties involved – the NFP sector itself, the state and federal governments as well as representatives of the community and business – should work together in consultation to bring necessary reforms to the sector which would continue to grow the confidence and trust of the stakeholders in the future of this vital sector within our community here in Australia.

NFPs “need a simple, flexible framework, uncluttered by the protections afforded to equity investors in companies legislation, with a regulator that is focused on facilitation”<sup>13</sup>

Traditional structures are too complex, too inflexible and too focussed on equity investment to provide the necessary framework for NFP organisations. Current legislation seems to impose an accountability, reporting and company model tailored more for the for-profit sector, which is not always suitable for NFPs. Examples of this would be in the areas of:

- [1] Compliance costs
- [2] Complexity within the Acts
- [3] Inappropriateness of some rules

“The cost element is particularly important, given that many not-for-profit organisations ...are small and frequently run by volunteers with limited resources’<sup>14</sup>

### **Industry Commission Report**

Also the Industry Commission recognised in 1995 that the impost on not-for-profit organisations that are companies limited by guarantee (especially due to the audit requirement) may be excessive. In recommending that all Community Service Welfare Organisations (CSWOs) be encouraged to incorporate under corporations law, it stated: “...smaller CSWOs may face higher costs as a result of this form of incorporation. Consideration could be given to lowering the costs of compliance for these organisations by, for example, requiring small CSWOs to be subject to a limited scope audit or audit by an independent examiner.”<sup>15</sup>

It is also important to ensure that any reform allows different levels of structure for differing sizes of NFPs. The level of compliance and accountability required for the local photography club should not be the same as that required for a large multinational NFP like World Vision. Just where those lines are drawn would be important. Should it be based on amount of assets? Should it be based on income? Should it be based on turnover?

Senator Doug Cameron stated that in his view to use turnover “might be a bit too simplistic because turnover is not turnover in the sense of a business; much of it is grants and much of it is fundraising that a normal business does not have to do. So there is a clear distinction between turnover, grants and charitable donations”.<sup>16</sup>

### **Centre for Philanthropy and Nonprofit Studies – standard chart of accounts**

Also to standardise the reporting process, we advocate that a specific financial reporting framework be developed for the not-for-profit sector. Some work has begun in this area in

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<sup>13</sup> Murray, Andrew, A Proposal For Simplifying The Legal Form And Regulation Of Small For-Profit And Not-For-Profit Entities, April 2008, p2

<sup>14</sup> Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 18

<sup>15</sup> Industry Commission 1995, *Charitable Organisations in Australia*, Report No. 45, Australian Government Publishing Service, Melbourne, p. 219. CSWOs were defined to cover a subset of not-for-profit organisations. This included many community welfare services which are legally charitable but excluded health, education and religion, all of which are normally considered to come within the legal definition of charitable purposes.

<sup>16</sup> Transcript – Senate Committee Public Hearing in Rockhampton, Friday, 18 July 2008, p 7

Queensland, with the development of a standard chart of accounts and data dictionary for small non-profit organisations that receive government funding - at the Centre of Philanthropy and Nonprofit Studies and the School of Accountancy (Queensland University of Technology) in their Non-Profit Organisation Chart of Accounts Project.

### **Fundraising legislation needs Australia-wide consistency**

Not-for-profit organisations that undertake fundraising must comply with all legislation in each jurisdiction/state where they operate. This is a considerable administrative burden on national organisations that wish to conduct national level campaigns. For these organisations, they must be registered in each jurisdiction, collect the relevant information and report to each jurisdiction. Often, inconsistencies between jurisdictions make this reporting process administratively costly for organisations. National consistency is a key issue for many fundraising organisations — the Fundraising Institute – Australia estimates that half of its members conduct fundraising appeals across State and Territory borders. This issue was also recognised by Consumer Affairs Victoria: “Any organisation wishing to fundraise in more than one state is faced with a plethora of statutory requirements affecting national fundraising. This is problematic for large organisations with a national presence, but may also impinge on the activities of local groups that may wish to link with interstate organisations with similar objectives to undertake a national campaign.”<sup>17</sup>

In summary, “reform of non-profit regulation should be an element of the Government’s overall economic and social program. Unnecessary and inappropriate regulation acts as a constraint on non-profit organisations. Its rationalisation, and in some cases, its removal, will assist the formation of new non-profit organisations and help existing non-profits better to pursue their mission”.<sup>18</sup>

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<sup>17</sup> Consumer Affairs Victoria 2004, *Review of the Fundraising Appeals Act 1998: Discussion Paper*, CAV, July.

<sup>18</sup> National Roundtable Of Non-Profit Associations, *Non-Profit Regulation Reform Program*, 2004, p3



## **ONE SINGLE NATIONAL REGULATOR**

Karen Spindler states that current reporting requirements have lacked strategic consideration of **what** should be reported by incorporated not-for-profits and **why**. She believes that it would be reasonable to group the NFP sector's motivation for regulation under three broad purposes:

- [1] Corporate Structure – basic legal framework
- [2] Governance Standards – minimum standards and obligations on governance
- [3] Government and Community Support – government support and backing so as to encourage fund and capital raising activities<sup>19</sup>

The first question that needs to be considered when looking at a possible model is – should there be one single national regulator?

In our opinion, the answer here is YES.

There needs to be a proper independent regulation of the sector. This is not currently possible given the complexities of the State and Federal laws. The lack of coordination across jurisdictions mean that the statutes offer a fragmented set of possibilities that do not provide clear accessible and consistent information about the sector. The current models were never designed for the NFP sector as a whole.

The precarious collection of regulations provided by a mix of common law, state, federal and local government laws is not a good regulatory framework for the NFP sector that enables the sector to easily accommodate change in our social and economic environment. The framework “must enable the non-profit sector to grow and adjust to rapid change. For example, non-profit regulation needs to be able to adapt to such developments as electronic commerce, social entrepreneurship, funding innovations and an aging population”<sup>20</sup>

Former Senator Andrew Murray states that there is a need for “an independent body for the registration and regulation of charities with an appropriate framework and widely accepted guidelines to assess an NFP's status. Such a body would make the decisions about whether a charity falls within the definition, whether it should be registered and whether it should be able to avail itself of tax exempt status”.<sup>21</sup>

### **Service Performance**

A good example of the benefits of a national regulator would be its ability to introduce sector-specific initiatives, such as the “Statement of Service Performance” which the Financial Reporting Council of New Zealand has introduced to the NFP sector in that country.

This innovation is not specifically an “accounting standard”, but it certainly resonates as being relevant to those NFPs (such as charities) which would seek to highlight their effectiveness and accountability in the delivery of community services, rather than the “bottom line” emphasis in most financial reports in Australia.

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<sup>19</sup> Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 4

<sup>20</sup> National Roundtable Of Non-Profit Associations, *Non-Profit Regulation Reform Program*, 2004, p4

<sup>21</sup> Murray, Andrew, *One Regulator One System One Law*, July 2006, p44

## **A SEPARATE ENTITY?**

Is it necessary to create a separate entity or can ASIC or the ATO administer this? Professor Mark Lyons states that what is needed in Australia is “a single, national non-profit incorporation and fundraising act having similar scope to the Corporations law and administered by an independent commission”.<sup>22</sup>

Our response to the question is – YES.

We believe that separate not-for-profit incorporation, similar to that available in Canada<sup>23</sup> body is needed rather than utilise the existing structures. The reasons for this are as follows –

- [1] The ATO is our national Tax Collector. It is a conflict of interest to have the national Tax Collector also the national Regulator for the NFP sector. Also former Senator Andrew Murray states that it “is a good administrative principle that the tax collector should not be burdened with non-tax regulation”<sup>24</sup>
- [2] ASIC, as the securities regulator, seeks to administer the Corporations Act. That is the framework of their expertise. In the midst of that ASIC seeks to be all things to all people – trying to regulate international hedge funds, markets, corporate conglomerates, large multi-nationals on the one hand while on the other hand dealing with the family company running a local small business. In the midst of all of that is the third sector. Sue Woodward is of the opinion that ASIC is not particularly user friendly to the NFP sector and so she supports the creation of an independent national regulator for the NFP sector<sup>25</sup>

In summary there must be “a regulatory environment that promotes non-profit enterprise, integrity and funder confidence”<sup>26</sup>

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<sup>22</sup> Lyons, M, *Charity Law Reform Needed, BRW*, Letters, 1-7 September 2005

<sup>23</sup> Non-Profit Incorporation (Canada) Domestic Non-Profit Corporation (Louisiana USA)

<sup>24</sup> Murray, Andrew, *One Regulator One System One Law*, July 2006, p35

<sup>25</sup> Murray, Andrew, *One Regulator One System One Law*, July 2006, p49

<sup>26</sup> National Roundtable Of Non-Profit Associations, *Non-Profit Regulation Reform Program*, 2004, p4

## **THE ROLE OF THE NATIONAL REGULATOR**

In our view, the NFP regulator should be in charge of registering charities for the purposes of the NFP sector, and for adjudicating the merits of the tax-exempt status of other NFPs.

To achieve registration, a tax-exempt NFP would be required to show that it fitted within the purpose and activities tests applicable to charities or public benevolent institutions and the extended statutory definition. This would have the effect of streamlining the registration process, it would make it flexible to changing conditions, and it would be transparent.<sup>27</sup> Once assessed as a not-for-profit entity the organisation can then be assessed further to look at their status as it applies under other areas of concession – e.g. FBT, GST, DGR and so on.

A key reason for why the current arrangement is difficult to understand and work in, is that there is no clear set of principles to underpin how concessions are applied. “It is in the tax law that the greatest confusion is to be found. There are a great variety of concessions given by different levels of government, each to a variety of non-profit organisations. It is impossible to find any set of principles underpinning the legislation that designates these concessions. There are not clear links between concessions provided and public disclosure requirements. Not surprisingly, in such an environment regulation is confusing, contradictory and often unfair”.<sup>28</sup> This needs to change and having one single entity responsible for this whole area would be a help.

### **Benefits of a Single Regulator**

The ongoing benefits of reform to simplify tax arrangements for not-for-profit organisations would include:

- much lower *administrative and enforcement costs* for governments and lower *compliance costs* for the sector;
- fewer *sector resources diverted* into seeking the most favourable tax status;
- more *transparent* and therefore more *accountable* arrangements; and
- more *equitable* treatment of not-for-profits and thus less *distortion* of their activities and fewer unjustified differences in public support for different activities and purposes<sup>29</sup>

In establishing the NFP registration and compliance functions it would be essential to determine the definition of a charity, which could be incorporated into legislation for certainty.

There are a number of other key areas that should fall into the role of this entity. Senator Doug Cameron stated at the public hearing in Rockhampton on 18 July 2008 that “wouldn’t it be better to have a stand-alone operation that could understand the differences between a profit organisation and a not-for-profit organisation and could handle some of those areas of difference with a detailed knowledge and...could provide structured educational opportunities for the not-for-profit area? That, to me, seems to be a huge issue...I just think that is an issue that should be dealt with in any statutory body, where they should be able to take a not-for-profit organisation from its start-up through to a mature, well-run, effective and accountable organisation.”<sup>30</sup>

An organisation of any size or complexity which wanted to incorporate as an NFP would apply for registration. This NFP regulator would provide information about how to register and what was required for the NFP to comply with the statutorily set out conditions for NFP status.

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<sup>27</sup> Murray, Andrew, *One Regulator One System One Law*, July 2006, p59

<sup>28</sup> National Roundtable Of Non-Profit Associations, *Non-Profit Regulation Reform Program*, 2004, p2

<sup>29</sup> Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 57

<sup>30</sup> Transcript – Senate Committee Public Hearing in Rockhampton, Friday, 18 July 2008, p 8

## **More than just a Regulator**

Sue Woodward recommends an advisory body for NFPs “to provide advice on financial and taxation matters, auditing, legal advice, training and dispute resolution/mediation services”.<sup>31</sup>

In its educative role, it should provide financial and taxation advice, limited legal advice, support, training to managers and directors of NFPs (which should, of course, only be provided to those entities which deserve NFP status). Additionally, dispute resolution and mediation services for NFP stakeholders, which would include donors, volunteers and recipients of NFP services should be provided.

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<sup>31</sup> Woodward, S and Marshall, *A Better Framework: Reforming Not For Profit Regulation*, Centre for Corporate Law and Securities regulation, University of Melbourne, 2004, p3

## ***THE FUNDING OF THE NATIONAL REGULATOR***

Former Senator Andrew Murray noted that in response to the first version of his discussion paper on this subject, the former Treasurer Peter Costello cited lack of 'cost-effectiveness' as one of the reasons the Government did not see a Charities Commission as the most appropriate way to achieve improved accountability and uniformity in the sector.<sup>32</sup>

Yet when looking at the complex nature of regulation at present, it is recognised that a number of the roles of the possible entity are currently done by other departments. For example ATO are responsible for tax concession status processing; ASIC for regulations for a part of the sector. In the States the areas of regulation of incorporated associations and charity collection/fundraising are covered under various departments. In other words, these areas of the new entity's role are already funded through existing means. What would be different here is that all levels of Government need to work together to enable such an entity to set up and funded. For the states this means some of their federal funding may need to be forgone as certain areas of their responsibility now fall on this new national entity.

The **Australian Evangelical Alliance** has no political agenda in this proposal. All we ask is for all levels of government to work together to bring about the needed entity for this sector. We believe a dependable well-regulated flexible NFP framework would work well and assist our nation to expand its culture of giving.

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Source unknown

## **COMPLIANCE AND COMPLEXITY**

Not-for-profit organisations seek to serve the community and/or their members. In turn, the community and members support not-for-profit organisations in their work. The regulatory environment should *support* that two-way relationship. Currently, the complexities, inconsistencies and unsuitability of some regulations mean that it represents more of a barrier between the not-for-profit sector and the community than a support to that relationship.

Current regulation imposes a significant compliance burden on not-for-profit organisations and parts of it are not suited to the organisations' purposes. This means that the sector's regulatory goals are not met — the sector does not get the structure, governance and support it needs from governing regulation; nor does it have an effective way of being accountable to those who support it. The result is wasted resources and an under-delivery of not-for-profit services or under-achievement of their purposes.

Nor are the community's or the government's goals for regulation well satisfied by the current framework. Complex, inconsistent and poorly targeted regulation reduces access to high quality relevant information about the sector, limiting transparency and accountability. Administrative costs of the current regulation are high, diverting public resources from higher priority ends. Unnecessary constraints on not-for-profit activities also needlessly limit the benefits to the community of these activities.<sup>33</sup>

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<sup>33</sup>

Spindler, Karen, *Improving Not-For-Profit Law And Regulation*, December 2005, p 47

## SUMMARY

We have noted that Philanthropy Australia identifies what it believes the government's role should be in this review process:

“An effective role for the Government would be to critically review all existing laws involved in corporate community programs to ensure simplification of the processes and governance requirements – making it easier to make a difference”<sup>34</sup>

In the view of the **Australian Evangelical Alliance** and its cross-cultural missions peak body **Missions Interlink** –

1. It can be clearly seen that there is a need for clearer and more effective regulation of this sector
2. At the same time, we do not wish to see the sector become so regulated that it becomes unable to offer the essential services that we currently provide within our community.
3. Member organisations of the Australian Evangelical Alliance agree that:
  - a. The not for profit sector in Australia is in urgent need of reform
  - b. Current regulatory compliance requirements for fundraising are complex, onerous and ineffective<sup>35</sup>.
4. Member organisations of the Australian Evangelical Alliance would welcome:
  - a. A national regulator.
  - b. A separate incorporation structure for our members, provided this decreased rather than increased our statutory compliance burden.
  - c. Separate but relevant financial reporting standards for our donors and stakeholders.
  - d. A regulatory regime which encouraged volunteerism, philanthropy and a continuation of taxation concessions and exemptions for not for profit entities which qualify for charitable status.

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<sup>34</sup> Philanthropy Australia, *Inquiry into Corporate Responsibility and Triple-Bottom-Line reporting for incorporated entities in Australia*, 23 February 2006, p2

<sup>35</sup> Fundraising compliance – only a very small number of NFPs receiving gifts and donations are registered for fundraising.