SUBMISSION TO THE SENATE STANDING COMMITTEE ON ECONOMICS IN REGARD TO ITS INQUIRY INTO THE DISCLOSURE REGIMES FOR CHARITIES AND NOT-FOR-PROFIT ORGANISATIONS

UnitingCare NSW.ACT is pleased to have this opportunity to respond to the Committee's Enquiry.

Background to UnitingCare NSW.ACT

UnitingCare NSW.ACT is the Board of the Synod of NSW and the ACT of the Uniting Church in Australia, responsible for community service programs, social justice advocacy, and chaplaincy. As an organization, UnitingCare NSW.ACT comprises three Service Groups (UnitingCare Ageing, UnitingCare Children Young People & Families, and UnitingCare Children's Services) together with a number of programs and committees. The organisation had a financial turnover in 2006/7 of $395 million and is one of the largest charitable organisations in NSW and Australia. The Synod has also allocated responsibility to UnitingCare NSW.ACT for providing the framework in which other Uniting Church community service organisations operate, and to maintain risk management in respect to them. These organisations, which are outside the direct management responsibility of UnitingCare NSW.ACT, comprise congregation-based childcare centres, the 9 Uniting Church Lifeline centres in NSW, Parramatta Mission, Wesley Mission, the Exodus Foundation, etc. These organisations represent some 30% of the total community service programs of the Uniting Church in NSW, while UnitingCare NSW.ACT manages the other 70%.

UnitingCare NSW.ACT is an unincorporated church body, operating under the Uniting Church in Australia Act 1977 no. 47 (NSW). Under the Act, the Uniting Church Property Trust (NSW) was established and it provides a legal entity for the operations of UnitingCare NSW.ACT. The Board is established under the By-laws of the NSW Synod of the Uniting Church, and the Synod has determined that the Board "is a separate decision-making body that determines policy and carries our its responsibilities and functions in a manner that is consistent with the purposes of the Church and its Constitution and Regulations, the By-laws of the Synod, and the policies and decisions of the Synod".

Most of the other Church community service organisations operate under Synod-granted Constitutions, but some [eg Wesley Mission] are congregations of the Church and operate in accordance with the authorities set out in the Uniting Church in Australia Act, the Constitution of the Uniting Church, its Regulations and By-laws.

UnitingCare NSW.ACT prepares its financial reports in accordance with the International Financial Reporting procedures, they are audited by Deloittes, and they appear on our web site.

Are current disclosure regimes for not-for-profit organisations adequate?

There is currently a multiplicity of reporting regimes for not-for-profit organisations, mostly connected to the bodies from which they receive funding. For example, UnitingCare NSW.ACT has a responsibility to the Commonwealth Department of Health and Ageing to provide full reporting information on the expenditure of funds provided for aged care. We are also required to provide accountability and reporting in regard to prudential requirements. The same situation exists in regard to funding received from other government departments, both State and

Commonwealth. UnitingCare NSW.ACT currently submits grant acquittals to these bodies with audited financial statements for more than 300 grants. Financial reports are prepared in accordance with the Australian International Financial Reporting Standards (AIFRS), are audited by Deloittes and appear on our web site.

UnitingCare NSW.ACT reports to the Synod of the Uniting Church as part of a separate compliance with Church By-laws and Regulations.

There is no one single disclosure point for financial reporting and disclosure in regard to UnitingCare NSW.ACT.

What would be the potential advantages and disadvantages for not-for-profit organisations of moving towards a single national disclosure regime? How might any disadvantages be minimised?

There would only be advantages in moving towards a single national disclosure regime if it were to replace existing reporting arrangements. For example, in UnitingCare NSW.ACT we are in receipt of funding from a wide range of Government departments and instrumentalities, both State and Commonwealth. Although some Departments, especially State, have agreed in accept the overall audited accounts of UnitingCare NSW.ACT with the addition of an appended management account of the particular program, some Commonwealth Departments continue to require separately audited accounts for their particular program. From the point of view of acquittals, it would be helpful for all Government Departments to adopt a single standard of reporting rather than the current differing standards between Departments and sometimes between different regions of the one Department.

Organisations which are registered as Associations with the NSW Office of Fair Trading, should not have to report to a national body in addition to the OFT.

Compliance with a national disclosure regime would be of assistance if it was accepted, for example, by Government and other funding bodies when making submissions. If the disclosure regime also included governance issues, it would obviate the need to establish the bona fides of the organisation on numerous occasions. For example, if the national disclosure regime provided easily accessible information on a web site of all currently compliant organisations, the bona fides of an organisation would be on the public record.

We note that many organisations still carry on their letterhead words to the effect that they are “a registered charity”. This is presumably an attempt to establish their bona fides, but has little basis in fact. In NSW it can only refer to the fact that they are registered under the Charitable Fundraising Act, the only purpose of which is to give permission for public fundraising. Church organisations such as UnitingCare NSW.ACT are exempt from the Charitable Fundraising Act, and groups which do not intend to raise funds publicly have no requirement to register. It is observed that there remains a public perception that charities are registered when they are not, and a more transparent system may assist many groups in establishing their bona fides, especially with potential donors.

A single disclosure regime would be most helpful if it were linked to a national system of registering charitable organisations. This task is now the responsibility of the Australian Taxation Office, which has the responsibility for determining Deductible Gift Recipient status and Public Benevolent Institution status. The

primary task of the ATO is to maximise taxation revenue and it is understandable that its aim is to prevent organisations from too readily obtaining DGR and PBI status. The fact that there is no agreed definition other than case law arising from the Statute of Elizabeth, means that the ATO operates in a less than clear environment with a conflict of interest.

Would a standardised disclosure regime assist not-for-profit organisations who undertake fundraising activities, and who operate nationally, to reduce their compliance costs if it meant that they would only have to report to a single entity?

UnitingCare NSW.ACT only operates with the State of NSW and the Australian Capital Territory and as a Church organisation is not subject to the Charitable Fundraising Act in NSW and has no experience in this area. However, presumably the answer to the question is yes.

If there was to be a nationally consistent disclosure regime, should it apply across all the not-for-profit organisations or should different regimes apply to different parts of the sector. For example, should charities be treated differently to other not-for-profit entities?

The experience of UnitingCare NSW.ACT is with the charitable sector. There is a great deal of difference in our operations, aims and objectives to an organisation like the Penrith Panthers, for example, which is a large football/social club in Penrith, NSW. They would already be subject to considerable regulatory control by the Office of Liquor, Gaming and Racing for example, so we would question the appropriateness of them coming under a similar system as ourselves.

If different regimes were to apply to different parts of the sector, how would this be determined and why? For example, would it be based on classifications or would different regimes apply to different organisations based on their financial turnover or staffing levels?

There should be one regime, but it may be more detailed for larger organisations. For example, there could be a simplified return for organisations with a turnover less than $1 million p.a. and there would be justification of not including at all very small organisations. For example, organisations with less than 5 staff and a turnover of less than $100,000 may well be excluded.

Does there need to be regulatory reform of the not-for-profit sector?

While we do not believe that the problems are overwhelming, we believe that some regulatory reform and simplification of procedures would be welcome.

We would emphasise the importance of any moves in this area not adding further to the regulatory controls already in place, but should be a substitution for some of them. UnitingCare NSW.ACT operates as a not-for-profit community welfare organisation providing services to a broad spectrum of Australian people. In almost every area of our work, we are subject to stringent regulatory controls. For instance, as an aged care provider we operate under the Commonwealth Aged Care Act, which contains very strong provisions of regulatory control. In another instance, we are providing out-of-home care services for children and young people, and must meet the requirements of the NSW Department of Community Services, and also are subject to accreditation by the NSW Children's Guardian.

However, we acknowledge that some new aspects of regulatory regimes have created problems for the Uniting Church as a whole, more so than for UnitingCare NSW.ACT. For example, as a result of the introduction of the New Tax System, the Uniting Church, Synod of NSW & ACT, was advised to register each Congregation and community service for GST, resulting in more than 760 ABN's being registered in NSW and the ACT.

This has imposed a significant administrative and cost burden on the Church because each ABN that employs staff is regarded as an employer and is required to have a separate Worker's Compensation Policy, in addition to submitting BAS and PAYG returns. A further consequence has been the cost of audit of financial statements for each ABN.

Unlike corporations under Corporations law, where registration with the State body (eg NSW Office of Fair Trading) flows through to the Australian Securities and Investment Commission, thus eliminating the need for separate State and Commonwealth registrations, unincorporated church bodies are required to maintain multiple business registration at both State and Commonwealth level. The Synod of NSW & ACT has more than 750 ABN's on the Australian Business Register and more than 100 State business registrations. In addition, the Church Property Trusts incorporated under State legislation, require registration by ASIC when operating outside their State of incorporation, which frequently occurs in a Synod which covers two jurisdictions. The need for registration in both Commonwealth and State jurisdictions with the ATO, ASIC, and the NSW Office of Fair Trading is both costly and confusing.

To the extent that it substitutes for existing systems, and to the extent that it assists in providing public confidence in our organization, we would support some type of national Charities Commission which would also be given the task of promoting the benefits and the contributions of not-for-profit charitable bodies.

What should be the objects of reform?

A primary object should be the support and the encouragement of the sector, and to simplify and eliminate unnecessary overlap and duplication in regulatory regimes so that a higher proportion of charitable funds should be used for charitable purposes. Single points of registration, a common approach to financial reporting and accountability that is acceptable to both State and Commonwealth funding bodies (common definitions, standards, and service contracts) would be welcomed. It should certainly not begin from the basis of the sort of ill-informed media comment such as are promoted by Adele Ferguson in "The Australian", where the impression is given that billions of dollars of "perks" are provided to the sector to the detriment of Australian taxpayers.

It would be a mistake to conceive of this reform as concentrating solely on finding and exposing the few instances where improper activity had taken place. Much more importantly, the object should be to support the sector by way of training programs, infrastructure support, and assisting in good governance and management.

Many not-for-profit organisations, particularly smaller ones, struggle to meet regulatory requirements. Any assistance given by Government by way of direct assistance, help desk facilities, etc, would assist in promoting better standards.

Should regulatory reform apply to the whole not-for-profit sector or only to sections of the sector?

In the first instance, a body such as a Charities Commission should limit itself to the not-for-profit charitable sector. We do not believe that it should encompass sporting clubs etc. There are few similarities between UnitingCare NSW.ACT and, for example, the Penrith Panthers social club.

Where should the impetus for reform come from? Who should drive reform?

There needs to be general consensus in the sector about the way forward. If reform is seen as assisting the sector in achieving its goals, it will be welcomed. If it is seen to be another bureaucratic imposition by Government, it will be resented and thus its effectiveness in supporting the sector will be diminished.

What sort of consultation should be conducted on the nature of any regulatory reform? How could input be facilitated from across the broad range of organisations which comprise the not-for-profit sector.

Appropriate consultation is vital. By limiting the scope of the not-for-profit sector to only those charities engaged in community social welfare provision, it would assist in reducing the burden of consultation. However, as previously stated, any reform must be seen as benefiting the sector and not undermining it, and the groundwork for this should be laid by careful consultation.

Should there be a single national regulator for the not-for-profit sector?

We have already commented on the need to better define "the not-for-profit" sector and to acknowledge differences between different types of not-for-profit organisations. While UnitingCare NSW.ACT predominantly operates only with the State of NSW and the Australian Capital Territory, we acknowledge the problem for national organisations in having to meet different State and Territory regulations.

Should a national regulator be responsible for the entire not-for-profit sector or only the charitable sector?

We would prefer that the regulator concentrate on the charitable sector and we foresee many problems in a national body ranging across, say, charities and sporting clubs. Nevertheless it would not be impossible for the one regulator to establish different regimes for different parts of the not-for-profit sector.

Should the regulator be independent of government?

Definitely. It needs to be established with an independent board.

Where would the regulator be best located? For example, as a stand-alone agency or located within an existing institution, such as the Australian Securities and Investment Commission.

Any regulator should be a stand-alone agency and certainly should not be part of the Australian Securities and Investment Commission or the ATO.

What would be the role of a national regulator? For example, should it have an educative/advisory role? Enforcement role? Mediation/Dispute resolution role?

The educative role should be emphasised. Of course enforcement of standards, codes, etc would have to be included. Also important would be advocacy on behalf of the sector, especially countering the myths concerning the tax-free status of the sector by sections of the business community. A role in dispute resolution could be considered. At present many service contracts contain dispute resolution clauses which rely on commercial mediators that are usually expensive and not well suited. A reference to an independent regulator may well be very useful in disputes over service contracts.

Should a national regulator be responsible for making decisions about charitable status?

Certainly this should be the case. In the report of the Inquiry into the Definition of Charities, reference was made to the three main concerns about the current role of the Australian Tax Office in determining charitable status. Those concerns were:

- inconsistency in decision making;
- the inappropriateness of a revenue agency as the primary decision maker on charitable status;
- and lack of co-ordination between Commonwealth and State administrative arrangements.

Although the Report of the Inquiry dealt to some extent with those claims, nevertheless the Inquiry still recommended that *"the 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".*

We believe that the time has come for this recommendation to be implemented. Obtaining charitable status is still problematic. While in the past decisions of the ATO in regard to Public Benevolent Institution status centred mainly on the interpretation of the concept of benevolence, we have noted that in more recent times there has been emphasis on the definition of an institution and this has brought more uncertainty to applicants and to existing holders of the status. The lack of a modern definition is also a problem in this area.

It is all very well to say that the decisions of the ATO can be challenged in court, but the expenses involved in such a challenge are more likely the reason for the few challenges that occur rather than it indicating satisfaction with the outcomes.

How should any national regulator be funded? For example, by the Federal Government, by Federal State and Territory governments, on a cost recovery basis?

It should be funded as an agency of the Commonwealth Government. While some of its services, eg dispute resolution, training etc, may be on a cost recovery basis, the core of its work should be a Commonwealth Government responsibility. To the extent that it replaces some State administrations, the Commonwealth may seek a contribution from States and Territories.

Should there be a single, specialist, legal structure for the not-for-profit sector?

There are currently diverse legal structures for the not-for-profit sector. The most common is probably the incorporated association. At one point co-operatives were frequently used, although they are not generally a suitable structure. While many not-for-profits are established as companies and report to the Australian Securities and Investment Commission, this is probably not the most preferable way for incorporation to be established. Reporting under ASIC is aimed at for-profit companies and the responsibilities of Directors more aimed at protecting shareholders' funds.

Many charities, such as UnitingCare NSW.ACT, are part of Church structures and operate using the Church Property Trust as a legal vehicle. While this worked well in the past, it no longer is as efficient as accountability increases. For instance, the Uniting Church in Australia Property Trust [NSW] was established more as a legal vehicle for holding property than for the range of purposes to which it is now turned. The Property Trust is known as a bare trust and its Trustees act on behalf of the Church but make no decisions of themselves. A good example of the problem would be the Commonwealth Aged Care Act under which one Approved Provider Status and Number can be applied to each legal entity. This means that while there are two providers of aged care services in the NSW Synod of the Uniting Church (Wesley Mission and UnitingCare NSW.ACT), they must be bound together under the one Approved Provider Status. While this could be solved by one or other of the parties becoming incorporated as a company, an incorporation process specifically tailored for not-for-profit organisations would be a more attractive proposition.

We are also aware of difficulties which have faced Lifeline Australia (of which we are part) in recent years, as they have struggled with incorporation under the ACT Associations Incorporations legislation and a national legal structure, developed specially for not-for-profit organisations would be of great benefit.

However, the establishment of such a structure would not necessarily mean disbanding the State incorporation arrangements, which might be continued in the short term in order to deal with the myriad of small not-for-profit organisations.

The main purpose of the new national structure would be to give charities an option other than incorporation as a company under ASIC.

Rev. Harry J. Herbert
Executive Director
UnitingCare NSW.ACT