

29 August 2008

Mr John Hawkins  
Committee Secretary  
Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Submitted by email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Mr Hawkins,

**Senate Economics Committee - Inquiry into the disclosure regimes for charities and not-for-profit organisations (the 'Inquiry')**

World Vision Australia (**WVA**) supports initiatives directed towards improved transparency and accountability of not-for-profit organisations (**NFPs**) and the establishment of a more cohesive and effective regulatory regime for the NFP sector in Australia.

WVA therefore welcomes the opportunity to make a submission to the Inquiry and looks forward to the opportunity for further discussion on these important issues.

**About WVA**

WVA is Australia's largest privately funded overseas aid, development and advocacy organisation. Operating out of its headquarters in Burwood East, Victoria, WVA employs about 550 permanent staff and manages around 5,000 volunteers. In 2007, WVA raised approximately \$350 million in cash and goods from the Australian community and contributed to programs in 66 countries. WVA is part of an international partnership of independent national World Vision offices that share the common mission of seeing an end to poverty, suffering and injustice. The World Vision international partnership operates in 97 countries.

WVA's mission is to be a Christian organisation that engages people to eliminate poverty and its causes. In particular, our mission is enacted through:

- Emergency relief and community development, using best practice programs to save lives and build sustainable communities;

- Policy change, advocating for government and institutional policies in Australia and internationally which benefit people in need; and
- Engaging Australia, to educate people about the causes of poverty and challenging them to be involved in its alleviation.

WVA is an Australian public company limited by guarantee (ABN 28 004 778 081).

### **WVA's submission**

WVA is a member of the Australian Council for International Development (ACFID). We have been involved in a consultative process providing feedback to ACFID on its submission to the Inquiry. At the time of finalising of WVA's submission, ACFID had not yet finalised its position on the nature of an independent NFP sector regulator and had received an extension of time for its submission. WVA therefore endorses the recommendations of the Australian Council for International Development (ACFID) as set out in ACFID's submission to the Inquiry, with the exception of this recommendation.

In relation to the question of sector regulation, WVA believes that the establishment of an independent regulator to administer all NFP incorporated entities (i.e. companies limited by guarantee and incorporated associations) as well as non-incorporated NFP organisations, may be an appropriate final objective for reform. However, we recognise that a workable interim measure may be to first establish a regulator to administer the charitable and related sector.<sup>1</sup>

WVA notes that the negative impacts on the NFP sector resulting from the inconsistencies and complexity of the current regulatory environment have been well documented in a number of reports in recent years, commencing with the *Industry Commission Report* in 1995.<sup>2</sup>

While the objective of much of the regulation specifically affecting NFPs is aimed at increasing transparency and accountability, it is WVA's view (based on our experience and observations) that the current mix of inconsistent and at times poorly targeted regulation does not effectively achieve this objective.

The regulatory framework which NFPs operate within should underpin accountability, which in turn underpins confidence in the sector. The related goals of improved accountability and good governance must be supported by the underlying legal structures used by NFPs and the regulatory framework with which they must comply. If the legal structure meets the needs of the organisation, then it will be easier to build consistent and appropriate reporting obligations – one of the cornerstones of accountability. WVA believes that reform directed towards establishing a more coherent NFP regulatory regime in Australia would lead to a strengthened sector and enhanced public trust.

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<sup>1</sup> As referred to in Chapter 32 of the Report of the Inquiry into the Definition of Charities and Related Organisations, 2001.

<sup>2</sup> 1995: Industry Commission Report – *Charitable Organisations in Australia*; 2001: *Report of the Inquiry into the Definition of Charities and Related Organisations*; 2004: Woodward & Marshall – *A Better Framework: reforming not-for-profit regulation* (Centre for Corporate Law, University of Melbourne); National Nonprofit Roundtable's *National Reform Agenda*; 2005: Allens Consulting Group, *Improving Not-for-Profit Law and Regulation*, commissioned by the (then) Department for Victorian Communities; *Giving Australia*, major research report commissioned by the (then) Department of Family and Community Services, on behalf of the Prime Minister's Community Business Partnership; 2007: Victorian Government Review, *Stronger Community Organisations* (Professor Allan Fels, AO); Victorian State Services Authority, *Review of Not-For-Profit Regulation*.

Additional observations and contextual analysis drawn from WVA's experience and interaction with the current regulatory regime (with particular focus on disclosure requirements) have been included at **Attachment 1**.

If you require clarification on any of the matters raised in this submission, please contact Fiona McLeay (contact details below) or Simon Miller (tel: 03 9287 2099 email: [simon.miller@worldvision.com.au](mailto:simon.miller@worldvision.com.au)). In particular, we would be happy to provide further detail about the way that the current reporting requirements impact on our operations if that is of assistance.

Regards

**Fiona McLeay**

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## Attachment 1

### Observations and comments on the current regulatory regime (with particular focus on disclosure)

This attachment includes comments and observations drawn from WVA's experience and interaction with the current regulatory regime. The comments and observations are grouped under the following sub-headings:

- **Corporations Act reporting/disclosure requirements**

**Key comment:** WVA believes that financial results on their own are a poor means of measuring NFP performance. The reporting requirements of the *Corporations Act* are primarily designed for *for-profit* entities and do not strategically address certain fundamental accountability needs of NFP stakeholders such as indicators of performance against mission. The *Corporations Act* reporting requirements do not encourage NFP organisations to communicate to their stakeholders a meaningful narrative of their achievements beyond the financial aspects. They therefore do not support appropriate accountability and transparency for NFPs.

- **Reporting/disclosure promoted through self regulation and sector standards**

**Key comment:** While it is not suggested that the mandatory disclosure regime should seek to replace effective self-regulation for NFPs,<sup>3</sup> the mandatory disclosure regime may be improved through closer alignment with best practice reporting models promoted through self-regulatory schemes and sector standards.

- **Fundraising legislation**

**Key comment:** It is WVA's view that the raft of obligations which it is currently required to comply with under state-based fundraising legislation creates an unnecessary administrative burden on the organisation, which does not result in enhanced transparency or accountability being achieved. Inconsistent and poorly targeted regulation reduce access to high quality relevant information about the sector, limiting transparency and accountability.

#### 1. Corporations Act reporting/disclosure requirements

Mandatory reporting under the *Corporations Act* for companies limited by guarantee (CLGs) requires:

- production of an annual directors report and declaration,
- balance sheet, profit and loss statement, cash flow statement,
- statement of changes in equity and
- the notes to the financial statements lodged with ASIC and distributed 21 days before AGM.

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<sup>3</sup> Dissemination of normative formulae by professional bodies such as ACFID is particularly important for Australian NGOs. The agenda setting influence of professional networks can have significant impact on sectoral behaviour and is critical for the **Compliance Pyramid** model which ACFID supports in its submission to this Inquiry.

These obligations are identical to those prescribed for public companies which operate with a *for-profit* motive.

The object of an NFP is to achieve its *mission* whereas the object of a *for-profit* is to achieve a *profit*. The implications of this are that the performance expectations of the stakeholders of an NFP and the performance expectations of stakeholders of a *for-profit* will be centered on different criteria.

Applying identical reporting criteria to both for-profits and NFPs fails to take into account the fact that the fundamental drivers of for-profits and NFPs are different.

WVA agrees with commentators who have suggested that:

*“the removal of a profit distributing purpose as the organisation’s anchor further allows accountability to move beyond an economic focus, and opens the organisation up to a range of roles which have a higher propensity to create expectations and trust.”<sup>4</sup>*

It follows that to accommodate the differing performance expectations and priorities held by stakeholders of NFPs and *for-profit* entities, the content of reports prepared by each should also differ.

The public company reporting obligations prescribed by the *Corporations Act* focus predominantly upon *fiscal* accountability. There is very limited scope for developing *process* accountability (i.e. about how things are done) or *program* accountability (i.e. about what has been achieved).<sup>5</sup>

Stakeholders of NFPs seeking to assess the performance or effectiveness of an NFP during a reporting period who rely solely on the statutory reports produced in compliance with the *Corporations Act* may find that there is insufficient information addressing critical aspects of the NFPs activities. Non-financial analysis and contextual narrative in such statutory reports has traditionally been limited.

It is true that the directors report must include a statement of the company’s principal activities through the year and any significant changes in those activities (section 299 *Corporations Act*). However, the scope to significantly develop non-financial reporting on performance in this forum is constrained. Indeed, anecdotal evidence is that advisors and auditors recommend minimum narrative disclosure in the directors report outside of financial performance.

The extract from the 2007 WVA Directors’ Report set out in Box 1 below provides an example of the extent of narrative disclosure of a compliant directors report. It is argued that this disclosure, while important, does not communicate sufficient information for stakeholders of WVA to effectively determine WVA’s performance against *mission* during the reporting period. In an effort to address this, WVA therefore supplements this information in its Annual Report and via other reporting mechanisms, such as its Annual Program Review, in order to more effectively report our performance against mission.

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<sup>4</sup> Dawson, Ian and Dunn, Alison, ‘Governance Codes of Practice in the Not-for-Profit Sector’ (2006) 14-1 Corporate Governance: An International Review, at page 36

<sup>5</sup> Leat, 1993 – as cited in Woodward & Marshall, A Better Framework – reforming not-for-profit regulation, 2004, pg 193

**Box 1: Extract from 2007 WVA Directors Report ([www.worldvision.com.au](http://www.worldvision.com.au))**

**Principal Activity**

The principal activity of the organisation during the year was international development aid and relief and no significant change in that activity has occurred during this period.

**Results**

The current year results were impacted by Asian Tsunami net disbursements of \$15.4 million for which income was received from 2005. This contributed to disbursements exceeding income in 2007 by \$10.2 million. No income tax is payable as the company is exempt under Australian taxation legislation.

**Dividends**

The company's constitution does not permit dividends and therefore no dividends have been recommended or paid for the year under review.

**Review of Operations**

In 2007 our total revenue was \$356.5 million, an increase of 13.9% over 2006. In the same period, we disbursed \$366.7 million, leaving a deficit for the year of \$10.2 million.

World Vision Australia made record payments to the field in 2007. Contributions to overseas and domestic projects totalled \$309.9 million, an increase of 2.9 % over 2006.

Revenue from child sponsorship continued to grow, increasing by 9.1% to \$189.3 million. Worldwide, 406,269 children, their families and communities in 57 countries benefited from our child sponsorship program. Donated goods revenue increased \$28.4 million (40.9%).

The total costs of fundraising and administration as a percentage of revenue (excluding the Asian Tsunami Appeal) was 14.7% in 2007 (15.6% in 2006).

**Significant Changes in the State of Affairs**

No significant changes occurred in the state of affairs of the company during the financial year.

It is argued that the reporting requirements of the *Corporations Act* have not strategically considered *what* (e.g. some indicators of performance against mission) NFPs should include in their reports in order to provide meaningful accountability to stakeholders.

While financial reports are extremely important, they should be presented in a way that makes sense to managers, boards and other stakeholders of NFPs. Financial results on their own are a poor means of measuring NFP performance.

Relevantly, the Nonprofit Roundtable have stated:

*"While nonprofit organisations exist in a market economy, the market does not have exactly the same regulating influence as it does for commercial enterprise. As well, many of the ways nonprofit organisations "fail" their stakeholders are different to the ways for-profits fail. These differences need to be appreciated in regulating nonprofit activities. They call into question the appropriateness of doing so through commercial regulation and highlight the unintended consequential effects of commercial regulation."* (May 2004)

**2. Reporting/disclosure promoted through self regulation and sector standards**

The current mandatory reporting requirements leave an accountability gap, which NFPs fill through self-regulation and voluntary disclosures. Examples of self-

regulatory codes and sector standards relevant to Australian Non Government Development Organisation's (NGDOs) like WVA include:

Local

- Australian Council for International Development (ACFID)<sup>6</sup>
- The Institute of Chartered Accountants in Australia (ICAA) recommendations<sup>7</sup>

Global

- The INGO Accountability Charter<sup>8</sup>
- The Global Accountability Project (GAP) of the One World Trust (UK)<sup>9</sup>
- Keystone public reporting framework<sup>10</sup>
- The Global Reporting Initiative (GRI)<sup>11</sup>

Key common elements of the standards and codes listed above suggest that good NFP reporting requires the following:

**(i) An explanation of what the NFP is trying to achieve**

- a summary of overall high level objectives
- specific objectives set to be covered during the year
- the strategy or plan for achieving the objectives
- an explanation of the significant activities undertaken to achieve the objectives
- identification of the available resources

**(ii) Reporting on outcomes (not just overall financial performance)**

- explanation of actual performance against objectives – what was achieved (outcomes) – what was not achieved – what unplanned and unexpected results occurred
- explanation of how outcomes are monitored and measured
- a discussion about whether resources were used as planned

**(iii) The setting out of future plans**

- explanation of long term aims

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<sup>6</sup> See ACFID Code of Conduct.

<sup>7</sup> In 2007 the ICAA issued a paper entitled *Enhancing not-for-profit annual and financial reporting* which includes recommendations for best practice annual reporting for Australian NFPs. The ICAA framework is likely to significantly influence NFP reporting in Australia. In 2007 PricewaterhouseCoopers held the inaugural Transparency Awards which judged NFP Annual Reports upon compliance with the new ICAA recommendations.

<sup>8</sup> World Vision International is currently a signatory and WVA is likely to become a signatory in due course. (<http://www.ingoaccountabilitycharter.org/>).

<sup>9</sup> This project aims to generate wider commitment to the principles and values of accountability (<http://www.oneworldtrust.org/>). World Vision International is a GAP participant.

<sup>10</sup> The UK organisation, Keystone, working in consultation with British Overseas NGOs for Development (BOND) and AccountAbility (UK) has developed a public reporting framework for civil society organisations ([www.keystonereporting.org](http://www.keystonereporting.org)). The Keystone initiative builds on the assumption that better performance and reporting standards will expand the resources available for social programs. If Keystone achieves its goals, it will influence both the substance of result reporting on social and environmental NGO programs and the context in which those results are communicated. It will help create shared standards for assessing the capabilities of NGOs, enhance the capabilities of NGOs and their abilities to learn from their work, and enable potential social investors to identify, assess and support effective programs. Its founders hope that these changes will enable funding for social results on a much larger scale than is now possible.

<sup>11</sup> The GRI's vision is that reporting on economic, environmental, and social performance by all organizations is as routine and comparable as financial reporting (<http://www.globalreporting.org>). While the GRI is not an NGO/NFP specific framework it has been applied by Oxfam GB in their 2007 Accountability Report. WVA is developing a report based on the GRI principles.

- explanation of the objectives set for the next year and the activities planned to achieve those objectives (these are the objectives which the following year's report will assess performance).

**(iv) An explanation of governance and internal processes**

It should be noted that while Australia's mandatory disclosure regime focuses almost entirely on financial accountability, regulators in other jurisdictions, such as England and Wales have been more progressive.<sup>12</sup> In England and Wales, charities with income of £1 million or more provide audited accounts detailing a range of qualitative and quantitative information about the charity. This includes information focusing on the charity's impact, how it measures its performance in achieving its aims and how it intends to improve. In addition, the largest charities also complete an annual 'Standard Information Return' that highlight how the charity sets its objectives and measures its outcomes against these.

While it is not suggested that the mandatory disclosure regime should seek to replace effective self-regulation for NFPs,<sup>13</sup> it is suggested that amending the mandatory disclosure regime to move it closer to best practice reporting models promoted through self-regulatory schemes and sector standards would be beneficial.

**3. Fundraising legislation**

The table below sets out the basic reporting obligations WVA is required to comply with under state fundraising legislation:

Jurisdiction	Act	Basic reporting requirement
Queensland	Collections Act 1966	Lodgement of audited financial statements (whole organisation plus Qld specific accounts indicating fundraising and expenditure in Qld)
New South Wales	Charitable Fundraising Act 1991	Lodgement of audited financial statements (whole organisation plus NSW specific accounts indicating fundraising and expenditure in NSW)
ACT	Collections Act 1959	No reporting requirement. The legislation exempts AusAID accredited organisations
Victoria	Fundraising Appeals Act 1998	Lodgement of full financial statements (whole organisation only plus estimate of the percentage of the gross proceeds from

<sup>12</sup> It is noted that the reporting obligations referred to from the regime in place in England & Wales are limited to charities registered with the Charities Commission of England and Wales and do not apply to all NFPs.

<sup>13</sup> Dissemination of normative formulae by professional bodies such as ACFID is particularly important for Australian NGOs. The agenda setting influence of professional networks can have significant impact on sectoral behaviour and is critical for the **Compliance Pyramid** model which ACFID supports in its submission to this Inquiry.



		fundraising appeals that will be distributed to beneficiaries)
Tasmania	Collections for Charities Act 2001	No annual reporting required
South Australia	Collections for Charitable Purposes Act 1939	Lodgement of audited financial statements (whole organisation plus SA specific accounts indicating fundraising and expenditure in SA)
Western Australia	Charitable Collections Act 1946	Lodgement of audited financial statements (whole organisation plus WA specific accounts indicating fundraising and expenditure in WA)
Northern Territory	No equivalent legislation	No reporting required.

From the perspective of enhanced accountability it is unclear to WVA why regulators in Queensland, New South Wales, Western Australia and South Australia require NFPs to prepare and lodge accounts which split out the specific expenses and funds collected in their state to accompany the whole of organisation accounts. It is suggested that this is an arbitrary and poorly considered requirement. In fact, by not accounting for head office costs or by simply apportioning these head office costs on a pro rata basis to the relevant state these state based accounts have the potential to be both inaccurate and misleading.

The Institute of Chartered Accountants criticism of the fundraising disclosure requirements is particularly relevant:

*“they are at best generic and are focussed on fundraising activities. Users of a NFP’s reports (Annual or Financial) would be better served by measurements that are specific to the NFP’s total operation.” (ICAA, 2003 – as quoted in Woodward & Marshall, p 219)*

WVA takes care to ensure that financial information it communicates to the public is clear and unambiguous. WVA is particularly mindful of the need for consistency in the representation of administration and fundraising ratios. Clause 5.6 of the ACFID Code of Conduct requires signatories to include a note explaining how administration and fundraising ratios have been calculated. Using arbitrary state based figures to calculate ratios may lead to a risk of inconsistent (and potentially misleading) information being presented to certain stakeholders.

Underpinning the potential for inconsistency is the fact that there are no specific or consolidated Australian Accounting Standards tailored for the needs of NFPs. Because there is insufficient guidance on how to apply some for-profit concepts in an NFP context, accounting treatments may differ from organisation to organisation. For example, expenses associated with providing information and awareness about a particular program to the public may be recognised and recorded as fundraising costs in some organisations but costed against another function such as marketing or

research in other organisations. With no consistent standards for the reporting of this data, reliable comparisons between organisations cannot be made.<sup>14</sup>

It is WVA's view that preparation of specific financial reports and returns for state fundraising regulators is unnecessary and duplicative. Lodging returns with state regulators does not enhance WVA's transparency or accountability to stakeholders, given that it will additionally have complied with financial reporting requirements of the *Corporations Act*, requirements for AusAID accreditation and ACFID Code financial reporting requirements.

In general the state fundraising legislation applies a *one-size fits all* approach to reporting criteria.<sup>15</sup> In treating all entities uniformly, state fundraising legislation fails to take into account the diversity in the scope and nature of organisations conducting fundraising within Australia today (i.e. from small to micro-organisations with a local focus through to large complex organisations with a national and international focus).

When applying reporting and disclosure obligations which may be appropriate for small organisations to significantly larger organisations, the detail and nature of the information requested from large organisations may be overly simplistic.

As a welcome exception to the one size fits all approach, fundraising legislation in the Australian Capital Territory recognises the fact that certain organisations are already subject to detailed regulatory reporting and accountability requirements. In the ACT all AusAID accredited organisations are thus exempt from the requirement to comply with its fundraising legislation.<sup>16</sup> The legislation recognises that a further layer of regulation at the territory level is unnecessary given that the AusAID accreditation process is robust - providing AusAID, and the Australian public, with the requisite level of confidence that the Australian Government is funding professional, well managed, community based organisations that are capable of delivering quality development outcomes.

In summary, it is WVA's view that the raft of obligations which it is currently required to comply with under state based fundraising legislation creates an unnecessary administrative burden on the organisation which does not result in enhanced transparency or accountability being achieved. Inconsistent and poorly targeted regulation reduces access to high quality relevant information about the sector, limiting transparency and accountability.

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<sup>14</sup> Aliens Consulting Report, 2005, p.25

<sup>15</sup> For example, in Victoria fundraising is regulated by the Fundraising Appeals Act (Vic) 1998, which is administered by Consumer Affairs Victoria. All persons or organisations conducting fundraising activities in Victoria must be registered under the Fundraising Appeals Act (Vic) unless they are subject to a specific exemption (or the person or organisation raises less than \$10,000 in a financial year through unpaid volunteers). Under the Fundraising Appeals Act (Vic) any person or organisation required to register (or to renew its registration) must answer the same set of questions.

<sup>16</sup> Regulation 6(1)(e) of the *Charitable Collections Regulations 2003 (ACT)* provides that the following will not be classified as a "collection" and as a result will not trigger any obligations to comply with the *Charitable Collections Act 2003 (ACT)*:

*"the soliciting or receiving of money or a benefit by a non-government organisation accredited with the Australian Agency for International Development (AusAID) (whether or not the money or benefit is used, or intended to be used, solely for aid in a foreign country)"*