



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

**(Reference: Auditor-General's report No 1 of 2006:
Regulation of charitable collections and incorporated associations)**

Members:

**MR R MULCAHY (The Chair)
DR D FOSKEY (The Deputy Chair)
MS K MacDONALD**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 9 MAY 2007

**Secretary to the committee:
Ms A Cullen (Ph: 6205 0136)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

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The committee met at 2.05 pm.

CORBELL, MR SIMON, Attorney-General

LEON, MS RENEE, Chief Executive, Department of Justice and Community Safety

PHILLIPS, MR BRETT, Executive Director, Office of Regulatory Services

THE DEPUTY CHAIR: Good afternoon everyone. Welcome to this first hearing of our inquiry into Auditor-General's report No 1 of 2006: *Regulation of charitable collections and incorporated associations*. As you have probably already observed, Mr Mulcahy, who is the chair of this committee, is absent. He will arrive later but, meanwhile, as the deputy chair I am going to read you this beautiful piece of prose.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

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Would the minister like to make an opening statement?

Mr Corbell: Thank you, Dr Foskey, and good afternoon to you and the committee. I do not have much to add in terms of an opening statement. I think it is important to reiterate that the government has, of course, responded to this Auditor-General's report. The most significant and important change that has occurred since the auditor reported on the regulation of charitable collections and incorporated associations is that the administrative arrangements for the administration of this act now rest entirely with the Office of Regulatory Services in my portfolio area in the Department of Justice and Community Safety. That has assisted, I think significantly, in the implementation of a consistent approach to the administration of this act and the information that is provided to charitable groups, charitable associations and incorporated associations. That is already proving to be beneficial in terms of information that is provided to charitable groups and associations to ensure that they have a better understanding of their obligations under the relevant legislation.

The government has agreed with most of the recommendations in this audit report and

that response is already on the record. I would be happy to try and assist in answering any questions you have, as would, I am sure, my officials.

THE DEPUTY CHAIR: That is very good news. So does that mean that JACS or the Office of Regulatory Services now has possession of all records relating to charitable collections?

Mr Phillips: We believe that we have all relevant files.

THE DEPUTY CHAIR: The Auditor-General's report found, at page 7, that a significant number of charitable collections may be under way in the ACT without complying with the collections act. Has any action been taken since the report to ensure that charitable collections are complying with the act and, if so, what?

Mr Phillips: We have taken a number of measures in relation to the registration of charitable collections and the way that we regulate the charitable collections. We have a system at the present time where we do inspections of those charitable collections that we see on streets in our normal course of inspection and compliance work. However, in relation to other matters, we rely on complaints from the public. We have had responsibility, and files and delegations have been changed, for about five or six months, and we have received very, very few complaints about charitable collections to enable us to follow it up.

As to that part of the law which requires charitable collections to provide audited records to the office, which I think is section 48 of the Charitable Collections Act, we have a process in place whereby if those audited accounts are not provided we will follow up the registered organisation formally by way of letter and we will try and assist them in providing us with audited accounts. If that is not possible, if that is not forthcoming or if they do not respond to our inquiry, we will be in a position to administer prosecution through the Director of Public Prosecutions. I would say that, given the length of time we have had it and the fact that we have not come into a financial year end yet, it is a bit difficult for us to glean from those that are currently registered in this current financial year whether there will be a high level of compliance or not.

THE DEPUTY CHAIR: JACS said in regard to the transfer of responsibility from TAMS—or DUS as it was—to JACS that it would cost about \$131,000 a year to perform those functions. Has that estimate proven to be accurate?

Ms Leon: There was a process of negotiation about the transfer of resources at the time that function transferred. As Mr Phillips has said, without having had the function for a full cycle of a financial year yet it is difficult to say exactly how much the function is costing, and it may always be somewhat difficult to quantify with any precision because we do not have a single separate stand-alone unit responsible only for charitable collections. We have incorporated it into our general licensing regime; people within that part of the Office of Regulatory Services regulate and monitor licences for a wide range of subject matters, so they are not separately counting how much time they spend undertaking work on charitable collections. We will be, once we have had the function for the course of a full financial year, in a better position to assess the level of activity across the whole spectrum of that function.

THE DEPUTY CHAIR: The government agreed that an effective monitoring and reviewing regime is needed as per recommendation 2 of the report. How will that be put in place and what will it involve in terms of funding operation by new or existing staff and who will take ultimate responsibility for it?

Ms Leon: Ultimately, the minister and I take ultimate responsibility for it, but on a day-to-day basis Mr Phillips will have oversight of all of the work of monitoring and reviewing the regime. The regime is along the lines outlined by Mr Phillips in his earlier answer, to the effect that we have undertaken an initial risk assessment of the field and that, at the moment, is guiding our operations to the extent that we rely upon information received from members of the public as one of the initial prompts for a closer look at such an organisation.

Especially towards the end of the financial year we will be in a better position to assess which of those who are regulated by the office licensing regime are ones about which we might have some cause for concern. So, for example, with those who are failing to submit reports or not submitting properly audited reports that raises a flag that this might be an organisation that needs a closer look, whereas those who are regularly submitting properly audited reports, so long as we sample those reports and assess that they are in order, give the officer a relatively high degree of confidence as to the compliance that they are exhibiting.

THE DEPUTY CHAIR: In other words, you would not be able to identify any charitable collections that failed to comply with the act at this point?

Ms Leon: As Mr Phillips said, that is correct.

Mr Phillips: I think that is correct. We have not had the function long enough and we have not had specific complaints that point us to particular charitable collections.

THE DEPUTY CHAIR: So that is how you would normally operate?

Mr Phillips: That is how we operate most of our industries with audits, with inspections, and we rely upon the complaints received by the public and the industries themselves in relation to follow-up action.

THE DEPUTY CHAIR: As you know, the Auditor-General found that the review monitoring and complaints processes of charitable collections licences were seriously deficient. Does the Attorney-General agree with this finding?

Mr Corbell: Yes, I do. Clearly there was an inadequate level of supervision around compliance matters, and that is why the government has decided to shift the responsibility for compliance and administration of that legislation to my portfolio. Given the functions of the new Office of Regulatory Services in enforcing and administering other licensing regimes, it was felt that that function was more similar, more akin, to the work already done by other parts of the department and would benefit from the expertise of people involved in that area also administering this scheme, whereas in the old Department of Urban Services the function was very much a stand-alone one and there were not many other—there were some, but not many—

licensing operations of the scale and nature that, for example, justice deals with on a day-to-day basis.

So I think it is a sensible change and one that, certainly from my understanding and examination of the new structure that has been put in place in ORS, gives us the ability and the skills to ensure better compliance. As Mr Phillips says, there is always going to be a level of public reporting necessary to identify potential breaches of legislation as well as an inspection and monitoring regime.

THE DEPUTY CHAIR: Has there been any cross-jurisdictional comparison to see how other states and territories deal with this issue—whether a more proactive role is given to the regulating body elsewhere? Have you looked into that?

Ms Leon: One of the tasks that are with the Office of Regulatory Services for the coming year is to undertake a review of all of its regulatory regimes, and we will look at the way in which we regulate charitable collections as part of that review. We take a close interest in what goes on in other jurisdictions, and especially in a small jurisdiction like the ACT we would certainly prefer not to be reinventing the wheel if someone else has already taken some steps and found some best practice that we can build on; but we will be looking at all of our regulations as part of that review in the establishment of the Office of Regulatory Services and that will include this regime.

THE DEPUTY CHAIR: That seems fair enough. I am just wondering whether—and this is Mr Mulcahy's question—any action has been taken to discipline the staff involved in the failure to properly supervise charitable institutions prior to its move?

Ms Leon: Not that I am aware of, but it would have been within another department at that time.

THE DEPUTY CHAIR: I have Mr Mulcahy's questions as well as my own.

Mr Corbell: An interesting position for you to be in, Dr Foskey.

THE DEPUTY CHAIR: Yes; you can see it is just tearing me apart. The report recommends that the exemption from licensing for charities raising under \$15,000 be reviewed. In the government's submission it stated that the Department of Urban Services has reviewed this and found it prohibitively expensive. Could you please provide figures as to how much it is estimated to cost in application processing if all charities were required to be licensed?

Mr Corbell: The government has agreed to review the threshold but we are cautious of the issues around imposing too onerous a burden on what are essentially small-scale fundraising activities and the need for bodies that are seeking to raise less than \$15,000 to go through an onerous licensing regime. As I understand it, that work is still occurring; is that correct?

Ms Leon: Yes. The position at the moment is difficult for the Office of Regulatory Services to comment on because we have not had the function in the portfolio long enough to get a good feel for how substantial that issue might be, of the number of charitable collections there could be that are below the threshold and whether there is

any evidence to indicate that there are problems occurring with the unauthorised disposal of funds in that area.

With the issue that the attorney raises it also needs to be borne in mind that there are substantial costs, not particularly in entering into the licensing regime but in complying with its requirements. For example, having one's accounts fully audited by a qualified auditor does not come without cost, and one would not like to be in a position of essentially eroding the charitable collection in order to comply with the monitoring regime for charitable collections to a substantial extent. So it is an area that we will keep under review as we carry out the function and as we become more knowledgeable of the area in which we are operating, bearing in mind those twin goals of not allowing there to be undue disposal of money allegedly collected for charities but also not unduly burdening organisations that are collecting for a good cause.

THE DEPUTY CHAIR: It would be interesting to investigate the understanding the community has about the benchmarks and the hoops that a charitable organisation has to jump through. They would expect that those accounts would be audited. That would be an assumption the community may have.

Ms Leon: The Office of Regulatory Services inform me that they receive about four or five phone calls a week about the rules that apply to charitable collections, which suggests that there is a reasonable level of awareness that there are rules that apply and that those who are about to undertake a collection for charitable purposes are informing themselves about those rules with a view to complying with them.

THE DEPUTY CHAIR: I do not know whether your department has had a chance to read the other submissions to our inquiry, but one submission identified a number of loopholes which prevent the department from taking action once a complaint has been made, for example, where reports have been filed but cannot be verified or requests for information have been ignored. There are a number of loopholes there and I wonder whether the department plans to specifically address those.

Mr Phillips: I have received a copy of the submission in relation to the report. Although it was only in a couple of them, they were quite informative in what they set out. We will be looking at those. Again, it is one of those things that it is too early for us to know the loopholes there are. As part of the review process of the legislation that relates to the Office of Regulatory Services, we will be looking at all of those laws to try to tighten up and knock out loopholes where they exist.

THE DEPUTY CHAIR: Will the JACS staff have more power than the DUS staff had to pursue organisations that do not meet their reporting requirements?

Mr Corbell: I do not think it is a matter of more power; it is more a matter of ensuring that an effective regime is in place to ensure compliance, whether that is a result of inspection or as a result of complaint. The relocation within ORS gives us that capacity that perhaps was not available in the previous administrative arrangements. Certainly, as Mr Phillips says, if there are issues where there are legislative problems in the current act, then the government will look closely at the need to amend the act.

THE DEPUTY CHAIR: I will be looking forward to seeing the results of the JACS review. Will they be made public in any way?

Mr Phillips: The regulatory review at the present time is about 75 to 80 per cent of the legislation, which covers the broad encompassing of ORS from a number of different agencies. At the present time it is being done internally by one of our policy officers.

Ms Leon: In the course of that review, if we were to go down the path of proposing a substantial policy change, then, as with all policy work that we undertake, consideration is always given to whether the matter is of public interest and ought to be the subject of consultation. If all we do is tweak at the edges and bring a few of the provisions into line because our review indicates that they are substantially similar and just need a bit of tidying up, then it might be that the process is not one of sufficient public interest for a wider consultation process. So we will look at that in the same way as we look at all policy development processes.

THE DEPUTY CHAIR: The Auditor-General's report found at page 9, paragraph 2.12, that there was no documentation detailing whether charitable collections met the requirements of the act for the purposes of application for a licence. The Department of Urban Services agreed, on page 5, to prepare formal guidelines for this process. Have those guidelines been completed?

Mr Phillips: Yes, they have.

THE DEPUTY CHAIR: Are you able to provide them to the committee?

Mr Phillips: Yes, I am.

THE DEPUTY CHAIR: That would be excellent. What records are now kept on the application process?

Mr Phillips: We have a rather streamlined database for part of our licensing and businesses that incorporate real estate agents, security industry and liquor. We have purchased an add-on to that business system, which is called an integrated business system, and have entered all data relating to charitable collections and those that are registered on that system. That system gives us the ability to have access to and join a public register. We operate a number of public registers in our other industries that we regulate.

We are in the process at the present time of uplifting the relevant data and looking at the relevant parameters around the data so that we can incorporate another non-public register into our business systems. But at the present time we have uploaded all of the registration systems in relation to charitable collections onto our licensing regime system.

THE DEPUTY CHAIR: Have existing licences been reviewed with a view to ensuring compliance with the act?

Mr Phillips: That will be reviewed on an ongoing basis. Perhaps the test will come at the end of this financial year when they are all required to submit audited financial statements.

THE DEPUTY CHAIR: Are all licensees now publicly listed, and how can we see those?

Mr Phillips: They are. There is a public register that is available. It is available in hard copy. Again, I am happy to provide the committee with a copy.

THE DEPUTY CHAIR: Excellent. It is only available in hard copy?

Mr Phillips: It will be online. We are working on our parameters and distinct information on our business system.

THE DEPUTY CHAIR: The Auditor-General's report found, at page 10, that there is a significant risk that many collectors are not complying with display requirements for charitable collections under the collections act. Since the act came into force, how many collectors have been approached by the department for failure to comply with these requirements? Have you any idea? How many have been prosecuted or otherwise disciplined?

Ms Leon: I am not aware that any have been prosecuted. I do not know whether we would have the data as to how many people have been approached. As Mr Phillips said, we have a range of teams that are out on a regular basis inspecting licensed premises and other industries that we regulate and who also inspect charitable collectors in the course of their duties. I would have to take on notice whether we have got records at this stage of our business on how many of those contacts have occurred.

THE DEPUTY CHAIR: That would be good. The Auditor-General's report also found that there was no evidence of any follow-up by the Department of Urban Services for failure of collectors to submit evidence of banking arrangements or annual reports. Has any action been taken to obtain this evidence? Do you have up-to-date evidence of banking arrangements and annual reports for all licensed collectors, or are we waiting till the end of the financial year?

Mr Phillips: We are waiting till the end of the financial year, yes.

THE DEPUTY CHAIR: We might have to have another hearing at the end of the financial year. The Auditor-General's report found that there was a significant risk of improper collection by a large number of small unlicensed collectors. Has any action been taken to prevent this risk?

Ms Leon: That goes back to the question of whether there is a sufficiently high risk of unauthorised collection below the \$15,000 threshold to justify the imposition of the licensing regime on those collectors. That is a matter that we have under review.

THE DEPUTY CHAIR: Do you have any information on instances of improper collections?

Ms Leon: In the period that we have had responsibility for this, which, as I say, is only about five months, we have not had brought to our attention any instances where that appears to be occurring. It is the kind of arena where there is a high degree of public exposure and a high degree of competition in the market.

There is some reason to feel that either members of the public who are concerned that the money is not going to the place where they intend it to or other charitable associations who are seeking to collect money from a similar market would bring to our attention instances of charitable collections that appear not to be compliant with the rules. While it is far from being a foolproof process, it is, in other areas of our activity, a means that generates a reasonable level of intelligence into the office which enables us to take compliance action.

THE DEPUTY CHAIR: As you know, a private submission highlighted a concern that charitable donations could be being spent largely on overheads and other non-charitable purposes. Does JACS have any requirements for collectors to disclose to donors where their charitable donations are going to end up, a breakdown of where the money is spent?

Mr Phillips: I am having a quick look through the charitable collections guidelines, the best practice guidelines, the subordinate law, to see whether there is a reference in there. We have not developed those guidelines as such.

THE DEPUTY CHAIR: The Auditor-General's report recommended that the Department of Urban Services conduct a risk analysis of charitable collections activity in the ACT and institute an effective monitoring and reviewing regime in response to the risks identified. The department agreed to that recommendation. What is the current state of this analysis? Have any significant risks been identified?

Ms Leon: The Office of Regulatory Services has at this stage developed a draft of the risk assessment of the industry in question. It concurs with the Auditor-General's view that the greatest risk to the public arises if people are conducting collections that are within the threshold—over \$15,000—but who are not licensed and therefore not subject to any monitoring or compliance by the office.

The other highest risk that has been identified is people who are collecting in those circumstances and then dispose of the funds rather than applying them to the purpose for which they were collected. Although it is still at a draft stage, that internal risk assessment process is influencing the focus of the office in terms of where it will direct its compliance activities.

THE DEPUTY CHAIR: It was the Department of Urban Services that responded to the Auditor-General's report. Has JACS taken on that response holus-bolus?

Mr Phillips: Yes.

Mr Corbell: Yes. It is a government response.

THE DEPUTY CHAIR: The Auditor-General's report found that charitable

organisations were unable to obtain advice regarding the legislation we required. Does JACS now provide advice to charitable organisations on the legislation? Who provides it? What qualifications do those staff members have to provide that advice?

Mr Phillips: The Office of Regulatory Services has an advice and complaints unit which provides advice and looks into a number of regulatory matters, including charitable collections. There is currently an officer located at Fyshwick where the licensing registration system is being monitored from. He provides advice to customers and clients when they phone the office or when they come in and see us. I think he has certificates in investigation, which most of the advice complaints officers have. His experience is one of quite a long-standing period in the office and in dealing with consumers in relation to advice and complaints under fair trading regimes. It is quite a similar type of law and a similar type of process that is used in charitable collections and associations in the fair trading regime.

THE DEPUTY CHAIR: One of the submissions that we got highlighted a concern with associations submitting annual reports that are heavily qualified so that the actual state of the association cannot be verified. Is an annual report from an incorporated association acceptable if the auditor's report on the accounts is heavily qualified? How will you react to that at the end of the financial year?

Mr Phillips: In relation to the compliance and the queries that we run in relation to an association of incorporations, we intend, again, to use the same compliance process—and we use the same compliance process—as we intend to do with charitable collections inasmuch as, if those audits come in and are heavily qualified, we will seek further information from the people in the organisations that lodged them.

Mr Corbell: It would be the same approach as if they were an incorporated association.

Mr Phillips: The same approach, yes, that is right.

Mr Corbell: There is already a process in relation to incorporated associations that would be the same approach in that regard. I envisage that can ultimately lead to the cancellation of the incorporation or a licence if adequate information is not forthcoming.

THE DEPUTY CHAIR: That is the end of my and Mr Mulcahy's questions. Did you have some questions, Ms MacDonald?

MS MacDONALD: No.

THE DEPUTY CHAIR: Given the fact that you will be so much better informed on these questions after the end of the financial year, would you be agreeable to coming back if we invited you to?

Ms Leon: We are always happy to assist the committee.

Mr Phillips: I hesitate to say that probably July is the time we will get them in. Once they are audited and by the time we get the process in, it might be towards the end of

the first quarter.

Ms Leon: If we think of a period around three months after the end of the financial year, that would ensure that we were in possession of all the information and would have had an opportunity to reflect upon it.

THE DEPUTY CHAIR: We will keep that in mind. Once again, thank you very much for coming along.

Mr Phillips: Thank you.

Mr Corbell: Thank you.

STROUD, MR LAURENCE GRAHAM

THE DEPUTY CHAIR: Mr Stroud, with your indulgence, I will read to you the statement on the card. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings. Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

Thank you very much for your submission, Mr Stroud. It is extremely valuable to us in our deliberations because it is not an area on which we were deluged with public submissions. It was very interesting to hear just now from the justice and community safety officers and the minister that it will be a complaints-led process in terms of responding to concerns. That kind of work means that we really are relying on interested citizens to speak up.

Mr Stroud, I invite you to make a statement, if you wish. Before you do, it would be helpful to Hansard if you just stated your name.

Mr Stroud: Thank you. My name is Laurie Stroud. I appear before the committee as a private citizen. It is my belief that when an organisation which purports to provide a community service seeks the assistance of the community to do so, and that organisation is registered under the Associations Incorporation Act, then the community should have a high level of confidence that any assistance it provides is properly applied.

My experience, albeit limited, in this regard indicates that, at least in the example quoted in my submission, this community confidence has been misplaced. How can one have faith in a system which permits repeated failures by an association to lodge annual audited statements and the acceptance of audited reports where the auditor simply makes a statement to the effect that he could not verify the financial accounts if the Registrar-General fails to take action then to deregister the association?

The significant failure of the association in question makes one wonder if there are other failures to meet the requirements of the act, such as holding general meetings and the presentation of audited accounts to the AGM. In the circumstances, the Auditor-General's report is most welcome and timely. I trust that the report and the

findings of this committee will result in prompt action being taken to tighten the legislation and to give the Registrar-General increased resources to enforce the legislation. Thank you.

THE DEPUTY CHAIR: Thank you.

MS MacDONALD: Brief and to the point.

THE DEPUTY CHAIR: Are you aware that the regulation of charitable institutions is now in the Department of Justice and Community Safety?

Mr Stroud: Yes, I understand there have been administrative changes.

THE DEPUTY CHAIR: In the office of regulatory services, where, we are told, there are people who are already regulating a whole number of other processes and services. We are told they have the expertise and we will be looking closely at that. As you heard, we will be recalling them three months or so after the end of the financial year because today, after five months of management, they weren't really able to answer our questions in any detail. So we have still got our hands on the hold button there. In the background section of your submission you say that you assume that the association must have received reminders for its annual reports. Did you find out whether they did or not?

Mr Stroud: No, it's an assumption and it would seem, in the light of other matters, that that was perhaps a major assumption which may be without foundation.

THE DEPUTY CHAIR: Have you come across any additional information on the matter since you wrote your letter to our committee in December?

Mr Stroud: No. When I put the submission in, I checked with the Registrar-General to see whether further financial statements had been lodged and I was told no, that had not taken place. I let it go at that. I didn't want to be wasting their time asking the same question again and again, knowing that this hearing was coming up. I thought that was the appropriate way to handle the matter.

THE DEPUTY CHAIR: As far as you know, that organisation is still carrying on its activities.

Mr Stroud: Sorry?

THE DEPUTY CHAIR: Is the organisation that you refer to in your submission still carrying on its activities?

Mr Stroud: As far as I am aware, yes.

THE DEPUTY CHAIR: So there will be a financial report at the end of this year.

MS MacDONALD: It might be heavily qualified again.

Mr Stroud: I am talking now of December. In December, the only reports covered

the years 2002, 2003 and 2004. So the report for the year 2005 was overdue and the report for 2006 was due on 31 December. I was given to understand by the Registrar-General that the very fact that an auditor's report had been submitted met the legislative requirements, even though the auditor's report was pretty damning.

THE DEPUTY CHAIR: That's interesting.

Mr Stroud: I have a copy of this auditor's report here. I have blanked out the name of the association, but I am happy to table it.

THE DEPUTY CHAIR: Thank you. We are very happy to receive that.

Mr Stroud: The only difference, basically, is that that is 2002, that is 2003, that is 2004. If you look at this report, the auditor is—

MS MacDONALD: You will need to sit down, otherwise Hansard can't pick you up.

Mr Stroud: If you look at that report, you will see that the auditor has basically thrown up his hands and said, "I've got nothing really to work on of any substance." It would be very disappointing to me and I think the general community if it is the intention of the legislation to have a report like that submitted and accepted.

MS MacDONALD: Mr Stroud, are you still involved with this association?

Mr Stroud: I am not involved with that association. The ACT association is a stand-alone organisation and I am not involved with that in any way.

MS MacDONALD: But you are with the national one, which has the same name.

Mr Stroud: Yes.

THE DEPUTY CHAIR: Your submission calls for the legislation to be strengthened to provide greater safeguards and penalties. What areas of the legislation do you consider to be the weak spots?

Mr Stroud: The advice I had from the Registrar-General was, as I just indicated, that those audited statements met with the requirements of the act. I think that that is really—what shall I say?—interpreting the legislation perhaps as it is written rather than as it was intended. That is one aspect.

I believe that prevention is better than cure and, while I sympathise with the Registrar-General in having limited resources, the fact remains that this organisation has been operating for several years now turning out those sorts of documents and only then after being literally forced to turn them in. I think that, if the Registrar-General had a system that would pick up the failure of an organisation to submit a return, that would be very helpful. That would start running up the red flag, shall we say.

THE DEPUTY CHAIR: Yes.

Mr Stroud: That is the main aspect. I think my other concerns could be covered

procedurally. For example, the people who take on the role of a committee member I think should be informed of their obligations. It is akin to directorship of a public company, where there is a whole set of rules and regulations and acts that you have to comply with. While that may sound a little heavy-handed for an association, I think it is a bit difficult to draw a line. I think people taking on the responsibilities should be aware of what they are, rather than somebody saying, "Look, Fred, we would like you to come and join us," and Fred simply says yes and is flattered by being asked to be involved. There is another side of the equation.

THE DEPUTY CHAIR: There is a \$15,000 cut-off point at the moment before an organisation has to meet requirements, including, I believe, the submission of accounts, isn't there? Yes, that is the way it is at the moment. Do you think that that threshold is relevant? I am thinking that the community at large would assume that all organisations were being regulated to some extent. Please let me know whether you think that it is a community perception that, if an organisation exists, then it meets certain criteria and they can trust it.

Mr Stroud: That's right. I have an associations information kit which is given out to the association. You are getting to the nub of my concern; that is, that there is legislation, there is an application process and there is a system in place to monitor the activities but, if the monitoring doesn't take place, the whole deck of cards collapses. I think the community is to be excused for assuming that the Registrar-General is checking up and that all the requirements of the act and regulations are being complied with.

MS MacDONALD: I don't have anything further.

THE DEPUTY CHAIR: Okay. I have a couple more. You do say in the comments section of your submission that, in the absence of your prodding, it's unlikely that any action would have been taken, despite evidence of numerous failures to comply with the legislation. In the concluding paragraph of your submission you recommend that the Registrar-General should have greater investigative powers. Given your views on the inaction that you identified, do you think that it is a matter of lack of powers or lack of will, resources or whatever to exercise those powers?

Mr Stroud: I was given to understand that the first step that the Registrar-General expected to be taken was for members of the organisation to take internal action to ensure that the rules are being met, and that is reasonable, too, but the members of the organisation may be blithely ignorant of what the requirements are. Maybe common sense should apply, but people are busy and they rely heavily on the president or the chief executive and assume everything is okay.

I should say when talking about the Registrar-General that it was with the former Registrar-General that I had most of my discussions. He has since retired. One of the reasons given, for example, for not submitting returns was that there had been a robbery and the records were taken. It made me even more alarmed that a robbery could take place and the only thing that was stolen was the records. There was no police report lodged, apparently, and that excuse was apparently accepted by the Registrar-General, who said that he didn't have investigative powers or the resources to carry out further action. There have been a whole lot of actions and inactions in this

case that cause me some considerable concern.

THE DEPUTY CHAIR: What additional powers would you like to see the Registrar-General have?

Mr Stroud: I was told that he didn't have powers to go onto the premises and demand the records. He could ask for those, but he didn't have the powers or the resources to do that. I would like to hope that the case that I have brought to your notice is an exception and not the general rule, but it's exceptions that we have to be alert to. The one consoling aspect is that the returns submitted indicated that the amounts involved ran into tens of thousands of dollars a year rather than hundreds of thousands, but I have only got the reports submitted by that association to go on. It may be that they are inaccurate; I don't know.

THE DEPUTY CHAIR: Hopefully, it is that there aren't many cases, but it may be that there aren't many Mr Strouds who make the effort that you did. The concern is that the onus is on concerned citizens at the moment. Your submission calls for the provision of adequate resources to police the legislation but, if you had a wish list, what would those resources be?

Mr Stroud: I can't quantify those. That was in response to the points that the Registrar-General made to me about the difficulties that he had: that he didn't have the investigative powers, he didn't have the resources, so he was in a very difficult situation. But, as I indicated earlier, there is a requirement for all registered associations to take certain steps each year. It doesn't seem to me to require lots of resources to have a system in place that notes whether these returns have been submitted or not. Maybe you allow a couple of years to go by. Arbitrarily, three years is the term which is allowable under the act. Maybe in circumstances such as I have outlined, where this organisation has apparently another three years to get its act together, that needs to be tightened somewhat under legislation.

THE DEPUTY CHAIR: When you made your initial approach to the department about the breaches that you had observed, what was the response? How were you dealt with?

Mr Stroud: They were helpful. I paid my money and got the documents off the official record. Action was taken in response to my concerns. The action wasn't perhaps as rigorous as I might have liked, but maybe your committee can set in train action which will rectify that and perhaps it won't happen again.

THE DEPUTY CHAIR: The government has provided a response to the Auditor-General's report where it does indicate compliance with most of those recommendations, but vigilance is always necessary. Finally, to wrap up, Mr Stroud, do you think that there is a lack of understanding on the part of charities of the requirements that they should meet? How, then, would the department make it easier for charities to comply?

Mr Stroud: Once again, it's an assumption based on very limited experience, shall I say, but I suspect, having been involved in a number of community organisations, that people hop in to help out without thinking about the obligations that they might have

under legislation. Maybe if it is a requirement that, when an organisation is a registered association, there is an obligation on them to notify all the committee members of the requirements under the act and maybe, when the returns required as to committee membership are submitted, the committee members should simply sign a piece of paper saying that they have seen the requirements and they understand them—something simple like that. I am not proposing a large bureaucracy to enforce this legislation.

THE DEPUTY CHAIR: No. We haven't got one.

Mr Stroud: By tweaking around the edges here and there, I think that the system could be significantly improved.

THE DEPUTY CHAIR: Thank you very much, Mr Stroud. Mr Mulcahy has just arrived. Do you have any questions, Mr Mulcahy? I have covered your questions.

THE CHAIR: I have nothing further. I apologise to the committee and to others. I had an unavoidable emergency to attend to. With your indulgence, I will now resume the chair.

I took the liberty of asking Dr Foskey if she would be good enough to raise a number of issues with you, Mr Stroud. I certainly appreciate the submission, on behalf of the committee, and your taking the trouble of coming here. I am sure my colleagues know of your background as a senior federal public servant in the past. Your perceptions in these matters are certainly appreciated by the committee and will be valuable to our inquiry. We appreciate people taking the trouble of lodging submissions as individual citizens.

MS MacDONALD: Hopefully, matters will be strengthened as well in terms of dealing with the issues that you have raised.

Mr Stroud: Thank you.

THE DEPUTY CHAIR: The secretary has just pointed out a correction that I should make. The reference to \$15,000 relates to charitable collections, not incorporated associations, and \$15,000 is the current threshold for collections requiring a licence under section 15 of the regulation. Part 2.23 of the Auditor-General's report says that annual accounts should be audited if the proceeds received in the ACT by the licensee from collections carried out completely or partly in the ACT in any 12-month period exceed \$50,000. I may have misled you there. Thank you very much Mr Stroud. It looks like our inquiry will be going on for at least three months—probably until about the end of the year. If anything further comes to light, we would really appreciate hearing about it.

Mr Stroud: Thank you.

CORNWELL, MR GREG

THE CHAIR: I would like to formally place on record a welcome to the former Speaker of the Legislative Assembly. We are delighted to have you back with us today.

Mr Cornwell: Thank you.

THE CHAIR: We look forward to discussing your submission. I will have to read you the statement to witnesses.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege, which I am sure you understand, means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

To recap, I extend you a warm welcome. We appreciate your taking the trouble to write a submission to our inquiry. Before we go to some questions on your submission, would you like to make some opening comments in relation to this inquiry?

Mr Cornwell: Yes, thank you. I would like to add more information and comment on my original submission—now that I have had the opportunity to do a little more research, to make further observations. This relates to and expands upon some of my recommendations.

The second point of my conclusion elaborated at paragraph 5 regards adequate and comprehensive accountability to the public. There are an increasing number of television advertisements—or so it seems—that I have noticed recently, being a reasonably content retiree now—when watching television, and I have noticed these in relation to charities. I wonder whether these are paid for and thus whether more money is being raised to spend upon this advertising. There are more charity shaven heads in Canberra than perhaps we would find in a Buddhist monastery. Hardly a day goes by without a funeral notice seeking charity donations in lieu of flowers. How is such money specifically accounted for? This is back to the question of accountability

from the charities.

This leads me to the mandatory audited balance sheets—which I listed—upon the internet. This was my fifth point at para 25. In my original submission, I conducted a very limited check on five charities, of the 1,000-plus listed. Only two had annual reports and balance sheets upon the internet. I have since checked most of the 113 listed in Auditor-General's report 1 of 2006 as holding licences under the ACT Charitable Collections Act 2003. Some are not applicable as public charities. However, the rest, the public money raising organisations, range from no records whatsoever through to financial labyrinths—that is about all I can explain them as—and national accounting only to minimum one-line entries and then to the very occasional—and I would stress the words “very occasional”—comprehensive accounting detail. Most people would not have the patience—or probably the interest. But this does not make the absence of easy to read and easy to access information of any less importance.

The evidence, or lack of it, mentioned above supports the need for charities to be more open in their operations, costs and activities—para 22 of the report; see my fourth recommendation. How many people have been saved, cured or put back on track, for example? Where did the money raised for, say, medical research actually go? Business should not be exempt from this scrutiny either. There is talk about corporate social responsibility, CSR—business philanthropy. But nobody has asked the shareholders, as I understand—certainly not to the extent of asking shareholders to identify charities they wish the company to support.

This situation is illustrated in the recent half-page ActewAGL advertisements listing its support for 143 groups over the past year. How were these chosen? Were consumers consulted? Would any monetary outlay be better spent in reducing electricity costs to all consumers? And why use paid advertisements—again without consumers' consent—to publicise its generosity with other people's money?

Finally, consolidation, amalgamation of like charities to be encouraged—para 28 of the report. A charity research website, Givewell, and I have a copy here for the committee, indicates in 2003—

THE CHAIR: We might just take that, Mr Cornwell.

Mr Cornwell: Here is the supplementary statement and the document.

THE CHAIR: Great.

Mr Cornwell: As I say, the charity research website Givewell indicates that in 2003 there were 700,000 non-profit organisations, NPOs, in Australia, including at least 21 charities relating to cancer alone. Other 1997 Givewell statistics show that 60 per cent of donors would give more if there was more information on charity efficiency and 79 per cent would give more if there was assurance that the money was going to the cause. Obviously, not all of these NPOs are actively seeking funds, but 700,000—there must be overlap and replication. With a combined annual turnover of \$27 billion—again that is Givewell, although on 24 March 2005 the *Business Review Weekly* estimated a tax-free total of \$70 billion between charities and religious

groups—there is considerable room, I believe, for consolidation and reduction in overheads.

That is the end of my statement, Mr Chairman.

THE CHAIR: Thanks, Mr Cornwell. I might lead off with a few questions related particularly to your initial submission. I take you to paragraph 5 of your submission. You highlighted the failure of many charitable organisations to adequately account to donors for the use of the funds collected. Just being the devil's advocate, if you like, in this case, could not a donor simply say to a charity, "I will not contribute unless you show more accountability"? That is, the donor is in a position to demand more accountability if they require it or to contribute in any way if they are already satisfied with the level of accountability. I am just wondering what you would say to the argument that, because charitable contributions are voluntary, it should be up to contributors to decide if they still want to contribute despite the poor public accountability of these charities. In the same vein—I suspect I have an idea of what your response will be—what kind of additional accountability measures would you specifically believe ought to be established as a minimum?

Mr Cornwell: To answer your last question first, I do think that there needs to be a lot more information on the internet—and easy to understand information. I had enormous trouble trying to track these things down. I found that they were all broken up. Some of them, as I say, were national. The other question—yes, the donors have the right to say no, and I presume that some of them do. I think the evidence is probably shown in those Givewell statistics, though—that 79 per cent would give more if there was assurance that money was going to the cause and 60 per cent would give more if there was more information on charity efficiency. There is obviously some concern out there.

We are generous people. I am speaking not only of Canberra but about Australia. I suspect, therefore, that not many people are going to bail up some charity group in the street who are issuing receipts and say, "No, I'm not going to hand it over." They may certainly do so if it is sent through the post. But bear in mind that many people are on charity lists and they simply fill them in.

THE CHAIR: So you would like to see at least a uniform presentation.

Mr Cornwell: Most certainly. I think it is absolutely essential. In fact, I think my first recommendation was something along those lines—sorry, a national charities commission was the first recommendation, and of course that could police the very point that you are making.

THE CHAIR: Thank you.

Mr Cornwell: We could standardise and provide adequate accounts for the average person, if you like, to be able to understand. At this point, could I raise one example, the Australian Conservation Foundation annual report of 2006? I have a copy here for the committee. It showed a surplus of approximately \$41,000. Revenue from operating activities was 7.9 million. Environmental program expenses were 4.2; fundraising expenses and recruitment of new supporters, 1.2; fundraising expenses,

service and communication, 1.4; and admin expenses, 1 million.

THE CHAIR: Interesting.

Mr Cornwell: I rest my case.

THE CHAIR: In your final recommendations in paragraph 38, you suggested that all charities should comprehensively account to the public for the use of all funds collected. Do you think that charitable bodies should have an accountability obligation to the general public or just to their donors? If the former, why would charities have to account to people who do not make donations?

Mr Cornwell: Again, if it is on the internet, it is available to both groups.

THE CHAIR: Yes.

Mr Cornwell: One would assume that charities would be keen to obtain more donors. To me, the best way of achieving that is to be open and accountable to such people who might be considering giving money—not just—

THE CHAIR: What sort of depth of comprehensive accounting would you like to see—or exposure?

Mr Cornwell: I would like a little more than what I just read out as an example from, as it so happens, the Australian Conservation Foundation. “Environmental program expenses—4.2 million” is not very comprehensive.

THE CHAIR: So you would like to see management accounts published or something like that?

Mr Cornwell: I would like to see much more detailed information. I do not want to see every cent being accounted for; there is a balance here. But, as I have said in the submission, it seems to me that even with smaller amounts of money raised—\$30,000 to help find a cure for X—I am not convinced that the money is going directly to the coalface—the John Curtin School of Medical Research, for example. And that is what I think is important—that people need to know that the money is going somewhere that they believe it should be going to. That is the biggest problem.

THE CHAIR: Fair enough. You have said in paragraphs 14 to 16 that you have got concerns that some charitable money may go to non-charitable purposes, such as being used for bribes. You suggest in paragraph 15 that donors should be made aware if any such action may be necessary. How would you see this being brought to the attention of donors? I think you talk about corrupt officials in foreign countries.

Mr Cornwell: I would hope that the charity would not get itself involved in this situation to begin with. I think that in many of the overseas charity groups—I made the point that we have not had, at any time, an account of where all the millions that were raised for the tsunami went. It is pretty common knowledge that money seems to be siphoned off in many overseas countries. It would surprise me if this did not happen in relation to charities, when it happens to everything else.

THE CHAIR: I am particularly interested in the last sentence, which I share some sympathy about. I will not name people at the moment, but this idea of squirrelling away money for a rainy day—

Mr Cornwell: Yes.

THE CHAIR: —having been involved in raising a lot of money for a certain organisation but never hearing another word about what happened, and the amounts being way in excess of what appears to be given out. I guess that is what you are talking about, aren't you?

Mr Cornwell: I am indeed. In fact, I have quite a few notes—quite a few clippings and things here. I do seem to recall that one international organisation has made that comment. I do not want to name them either, because I think that it applies to more than one organisation. But I think it publicly stated at one point, “Look, anything left over we will apply to another rainy day.” I am not sure that that is what the donors originally intended.

THE CHAIR: How do you deal with that? Australians have got a remarkable reputation for generosity both as individuals and in other ways. Territory and federal governments have all stepped into the breach in a way that is probably—we have shown the world how to do it.

Mr Cornwell: Indeed. I agree.

THE CHAIR: What is the solution? Do you have a view on that, even if you just keep to the domestic situation? Even if we have a local disaster, people are very generous, as a rule, in Australia. I just wonder what the way forward is.

Mr Cornwell: National or international, I believe it is the responsibility of the charity to make sure that the money is applied where they state it was going to be applied—and all of it, for that matter. I suppose that, if a company is raising extra funds, we presume—in fact, I think there are laws requiring it—that they apply it in the right area and do not say, “Well, we're going to keep these few millions back for something else.” I think the charities, who are a business in themselves, have a responsibility to make sure that that money is applied in those areas where they say it is going to be. Otherwise, it is rather misleading to people who come forward with the best of intentions.

THE CHAIR: Yes, fair enough. Dr Foskey, do you have some questions?

DR FOSKEY: Yes. I want to clarify something with you, Mr Cornwell. When you used the instance of the Australian Conservation Foundation as an example, would you be classifying that as a charitable organisation?

Mr Cornwell: I think they do, doctor. There was another one, by the way, which related to—I do not have my papers now, but I think it was the *Canberra Times*, 2 January 2007. The Wilderness Society—this was a letter—spent 4.5 million on staff costs but less than 300,000 on scientific research while making a 1.4 million profit

and holding a healthy bank balance of 5.6 million. It was a letter to the editor.

DR FOSKEY: I remember that letter. With respect, I want to clarify there. In your opinion, is it a charitable organisation because it can claim tax deductibility?

Mr Cornwell: I think that is probably it.

DR FOSKEY: The objects of their organisation would probably say that they were about lobbying for the environment and so on. With the Australian Conservation Foundation, for instance, which I actually have worked for, people gave money knowing that it would be used in campaigns, and that usually involves people being employed to do that.

I just wanted to clear up whether those are the sorts of organisations that your submission mostly is dealing with. When we talked to the officers of JACS, I think that we were talking particularly about—you talk about it yourself—organisations that raise money for cancer or people giving donations—not so that people can go out and lobby politicians and so on.

Mr Cornwell: It is the tax deductibility which is the—

DR FOSKEY: It is the tax deductibility that is the issue for you?

Mr Cornwell: Yes, I think that is the important thing.

DR FOSKEY: I just wanted to clarify that.

Mr Cornwell: If these organisations are not to be put forward as charities, then we are probably going to have to find some other nomenclature for them.

DR FOSKEY: That might be—

Mr Cornwell: But at the moment, they are all in together. BRW headlined it—I mentioned the 70 billion, of course. “God knows what Australia’s charities and religious groups do with their tax free money” was the sort of subheading to the article in that BRW. Yes, maybe we do need a different definition of some of these organisations.

DR FOSKEY: Yes, maybe we do.

Mr Cornwell: But again this is a matter for government. If we had a charities commission, then perhaps that could be addressed.

THE CHAIR: Notwithstanding that telecommunications are a federal responsibility, I was taken a bit by your comments in paragraphs 33 to 35 of your submission where you suggest that charities should be included in the voluntary telephone ban listing.

Mr Cornwell: Yes.

THE CHAIR: As one of those—I think the only person in the ACT—who has been

involved in program telemarketing for an election, I understand that that does disturb some people.

MS MacDONALD: Yes. I confess that I have not done that.

THE CHAIR: I am just wondering if you would like to expand why you feel they should not be allowed to call residents for support.

Mr Cornwell: The charities?

THE CHAIR: Yes.

Mr Cornwell: I regard them as being as intrusive as anybody else making those calls. The other thing—and I think I made reference to this—is that it does seem to me to be rather a foolish thing to do to solicit donations by telephone. For a donor to hand over their credit card number in itself should cancel out the success or not that they have. I certainly would not be doing it. It also seems to me that probably a great many people—I do not know to what extent—have their own charities that they like to support. I wonder how many hard-luck stories over a telephone would necessarily elicit more information or more funding for them. I just find them as intrusive as—

THE CHAIR: As any other telemarketer?

Mr Cornwell: Yes, the Hyderabad calls or—

THE CHAIR: Of which we get many. Mr Cornwell, just on your charities commission, how would you see the territory government having a role there and where do you see the line of demarcation between the commonwealth and the territory or states in such a commission?

Mr Cornwell: I guess the easiest thing to do would be to have the responsibility of the territory or state at the level of registration.

THE CHAIR: Right.

Mr Cornwell: In other words, the charities registered in the ACT—okay. Of course, one of the problems that we face with this is that you have national bodies, and numbers of them wrap all their money up from all over the country in one national annual report. As I mentioned earlier, some of them are extremely lightweight in terms of information.

THE CHAIR: We have taken more time than we told you we would ask you for. It is an interesting area and we appreciate the extent to which you have researched the topic, which is going to be beneficial to our committee.

MS MacDONALD: Is this an indication of what is to come for us when we leave this place?

THE CHAIR: It is good to see you, Mr Cornwell, and to see you in good health.

Mr Cornwell: Thank you.

THE CHAIR: We thank you for taking the trouble to involve yourself in this committee's inquiry.

Mr Cornwell: Thank you very much.

THE CHAIR: We will now adjourn these proceedings because we have a private hearing.

The committee adjourned at 3.34 pm.