



**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:**

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

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 12 SEPTEMBER 2007**

**Secretary to the committee:  
Mr H Finlay (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).

**WITNESSES**

**BRADSTREET, Ms KATINKA**, Senior Auditor, ACT Auditor-General’s Office..... **25**

**NICHOLAS, Mr ROD**, Director, Performance Audits and Corporate Services,  
ACT Auditor-General’s Office ..... **25**

**PHAM, MS TU**, Auditor-General ..... **25**

**The Committee met at 3.58 pm.**

**BRADSTREET, Ms KATINKA**, Senior Auditor, ACT Auditor-General's Office  
**NICHOLAS, Mr ROD**, Director, Performance Audits and Corporate Services, ACT Auditor-General's Office  
**PHAM, MS TU**, Auditor-General

**THE CHAIR:** Welcome everybody. This is perhaps the final hearing in our inquiry into the Auditor-General's report entitled *Regulation of charitable collections and incorporated associations*.

I am obliged to read to you these words, so I will do so quite quickly. The committee has authorised the recording, broadcasting and re-broadcasting 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 or all or part of that evidence to the Assembly. I should add that any decision regarding the 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 coming in. Do you have some introductory remarks or would you like just to answer questions?

**Ms Pham:** Thank you, Dr Foskey. No, I do not have an opening statement; I am happy to take questions.

**THE CHAIR:** Thank you, because this is the second time you've appeared in regard to this matter.

**MS MacDONALD:** It is the first time on the record, though.

**THE CHAIR:** The first time on the record, yes; the other was a private briefing. We have heard some evidence and received some submissions; consequently we will have some questions. I just have the one.

The Attorney-General took a question on notice during the hearing when he was giving evidence. I asked how many collectors had been approached by the department for failure to comply with the display requirements for charitable collections under the

collections act. The answer was that there were no records regarding the number of collectors that had been approached, with an indication that it is the intent of the Department of Justice and Community Safety to review the administration of charitable collections, which would include the operations of collectors.

So I guess the question to you is: have you received assurances and do you feel confident that there will be better regulation of collectors, given the response that you have received to the report from JACS?

**Ms Pham:** I read the evidence provided by the minister and the department to the committee and we also separately followed up with the department regarding our recommendations. While the department have agreed on the recommendations and are in the process of commencing implementation of some of the recommendations, it is still early yet to know whether or not these recommendations will be fully implemented and what mechanisms they will put in place to address all the problems that we identify. So it is too early for us to know whether or not their actions will give more confidence in a better regulation of charitable collections.

I think the question you raised with the minister may relate to compliance with the requirement to display collection badges in the street or something like that. But there are other forms of noncompliance that we identified in the report that are even more serious, like banking records and information, which gave the department some knowledge of whether or not the moneys collected for certain charitable purposes actually are spent for that particular purpose. So noncompliance is quite widespread, and the non-display of badges or whatever is only one small component of noncompliance.

**Mr Nicholas:** Part of the response that we received from the department in our later inquiries about how they are progressing implementation indicated that they accepted that there had not been a great deal of monitoring of paid collectors to date, that they were implementing their new compliance regime and that they expected that to be in place by December 2007. So that's later this year.

**THE CHAIR:** Did you have any thoughts about having a look at it after that, or is it something that we as Assembly members would need to do?

**Ms Pham:** We hope that as part of our performance audit follow-up program every second or third year we will do a follow-up performance audit report similar to the one that we recently did on how well the agency implements recommendations in audit reports. So we will do that every three years as part of the follow-up full performance audit report to the Assembly, and that could be part of the process.

**MR MULCAHY:** I am wondering if in your audit testing, because part of this was also incorporated associations, whether you did any testing to ensure that organisations that present themselves as associations and receive government grants are in fact properly incorporated and file returns. It has been claimed—I do not have the resources to examine it at this stage—that there may be associations in one sector receiving grants that in fact are not incorporated and funds are not going to legitimate non-profit purposes. Have you done any work in this area?

**Ms Pham:** This was not part of our audit scope. I think the scope of the audit is very much about how the Registrar-General administers his responsibility to regulate these incorporated associations, but we do not know—

**MR MULCAHY:** But isn't that therefore integral? We had evidence from one witness that you would have read that raised issues about associations in fact not filing returns. Surely the compliance that is integral to actually having some mechanisms to know that legitimate organisations are operating this association not just using them—

**Ms Pham:** We certainly identified the problem in incorporated associations not lodging annual returns, or when they lodge annual returns these annual returns are not checked by the office. The Registrar-General interprets his role very narrowly within the legislation, so in his interpretation if associations lodge annual reports they comply with the act. It doesn't—

**MR MULCAHY:** No-one is out there looking at people who say “we're the XYZ association” and in fact never getting around to incorporating under the Act?

**Ms Pham:** No, I don't think so.

**Mr Nicholas:** We tested a range of the applications and the files associated with various incorporated associations that were within the department. At 3.14 of the report we indicate that we looked at 19 applications. Of these, one did not comply with the requirements of the act, but that was remedied fairly quickly. But we have not gone to the extent that you are suggesting, Mr Mulcahy, of testing grants that are administered by a particular agency and whether a claim of incorporation is in fact legitimate. We would see that it would be the responsibility of the administering agency in particular to validate those claims themselves.

**MR MULCAHY:** Okay.

**THE CHAIR:** So as far as you could see then, there was no evidence, in being given charitable status, that it had been investigated whether a group was incorporated. I mean surely there would have needed to have been a bit of paperwork that showed the certificate of incorporation or—

**Ms Pham:** I think they are two separate issues you are raising here. One is about associations being incorporated under the Associations Incorporation Act and the other one is about a group asking to have a permit or a licence to collect money as a charitable organisation. So charitable organisations may or may not be incorporated under the associations act.

I do not think it was a requirement under the Charitable Collections Act that you had to be an incorporated association. So any group can get together and put in an application, and, as long as they meet certain conditions in the application that they will collect money for a charitable purpose, then I don't think they need to be an incorporated association.

**THE CHAIR:** But then if you are not incorporated there is no requirement for your

accounts to be audited, is there? There is less accountability in terms of the management of funds. There can still be an accountable keeping of funds, but there is no requirement?

**Ms Pham:** No. There is a requirement for you to put to the department not an annual report but a report about the banking details of the charitable collection. But what we found is the department did not monitor that compliance.

**MR MULCAHY:** And they are not monitoring. If I set up an association and troop off to the government and say, “We’re the displaced Irish people’s association and we would like a grant for our radio broadcasting,” really there is no onus on me to incorporate that at all; and if we are not collecting for charity there’s no scrutiny of that either.

**Mr Nicholas:** It would be a matter again, I would think, for the administering agency of that grant program you’re discussing to satisfy themselves that any application they receive is in accordance with their own guidelines. The office of regulatory services or the Registrar-General’s Office doesn’t play a role in that aspect. As Ms Pham has said, they have interpreted their role under the incorporated associations act fairly narrowly.

**MR MULCAHY:** As only dealing with the ones that actually sought incorporation?

**Mr Nicholas:** Yes.

**MR MULCAHY:** Okay; thanks.

**THE CHAIR:** Are there any more questions? It doesn’t look like it. Thank you very much for coming in. Also, my sympathies because I know you have lost a friend and colleague. I think it is especially difficult for you to appear and we really do appreciate it.

**The committee adjourned at 4.12 pm.**