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## 6 Regulation of the not-for-profit sector

### Key points

- Sound regulation of not-for-profit organisations (NFPs) is important to build and maintain trust in the sector, facilitate the establishment and operation of organisations with community-purpose, and promote higher standards of service care and public safety.
  - A number of previous inquiries and reviews identified concerns with the regulation of NFPs, but few recommendations have yet to be implemented.
  - The NFP sector would benefit from the same attention that has been paid to simplifying and improving business regulation.
- The current regulatory framework for NFPs is characterised by uncoordinated regimes at the Commonwealth and state/territory levels. Disparate reporting and other requirements add complexity and cost, especially for organisations operating in more than one jurisdiction.
- A national registrar, acting as a one-stop-shop, would bring together current Commonwealth regulatory functions, including tax endorsement, and the incorporation of NFPs.
  - It would also provide a national registry for cross jurisdictional fundraising organisations/activities.
- The recently proposed reforms to the Corporations Act for companies limited by guarantee offer an opportunity to establish a separate chapter for NFP companies. This could:
  - address deficiencies in rules governing disposal of assets on dissolution
  - promote understanding of requirements by inclusion of a Plain English guide
  - provide a model for other jurisdictions on proportionate reporting and fee requirements.
- States and territories remain well placed to regulate smaller and state based NFPs. Many have been moving to reduce compliance burdens. These could be further reduced by harmonisation of legal and reporting obligations, including fundraising.
  - Migration from one legal form to another could be facilitated by the removal of stamp duties, and excessive regulatory requirements or restrictions on transfers. This would enable growing organisations to move to the Commonwealth jurisdiction.
- NFPs should be encouraged to develop and implement codes of conduct and other self-regulatory regimes where these would enhance public trust and confidence in their activities.

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This chapter examines the regulatory regime faced by not-for-profit organisations (NFPs) and proposes changes aimed at improving the quality, and reducing the burden of regulation. In particular, the chapter considers:

- a role for a national regulator for NFPs, including tax endorsement arrangements
- the adequacy of existing legal forms and associated reporting requirements
- inconsistency in fundraising regulation across jurisdictions
- a role for self-regulation among NFPs.

At the outset it should be noted that on 30 April 2009, COAG agreed to the inclusion of regulation of the NFP sector as part of Business Regulation and Competition Working Group's 2009 work plan (COAG 2009a). The working group subsequently tasked a sub-group to report on a nationally consistent approach to fundraising legislation as one of its first tasks and the working group is considering additional areas for action.

## **6.1 Is the current regulatory environment working?**

A sound regulatory system for NFPs is important in building and maintaining trust in the sector and in facilitating the establishment and operation of NFPs. This role is acknowledged by the sector:

... the community values the contribution of the sector and expects State, Territory and Commonwealth governments to help non profits to flourish through appropriate regulation and concessional treatment. This is reflected in current legislation and regulations, which aim to assist non profit organisations by reducing costs, providing protection for members and directors, and by increasing the confidence of the public to make donations. (ACOSS, sub. 118, p. 28, citing NRNO 2004b, p. 2).

The majority of NFPs are unincorporated and so largely fall outside the regulatory system for NFPs. Of those that have a formal legal form, many are small incorporated associations which operate entirely within one state or territory. While overall the regulatory regime works well for these NFPs, there is confusion about the best form of incorporation and compliance costs are often not proportionate to size or scope of activity. It is the larger NFPs, and those operating in more than one jurisdiction (including federated models), that face an unnecessarily complex, confused and costly regulatory environment:

... the fact that there are nine different legal structures and associated compliance requirements complicates and impedes the work being done by [national sporting organisations] and others to support those who are responsible for delivering their sport within the community. (Australian Sports Commission, sub. 177, p. 33)

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It is clear from the submissions made on various inquiries held over a ten year period that the NFP regulatory environment is overly complex and that action should be taken to reduce the regulatory burden on the sector in order to enable efficiencies and more effective operations. (Institute of Chartered Accountants, sub. 70, p. 1)

The lack of simple, consistent and equitable regulation has a direct, negative impact on the sector, resulting in higher compliance costs for no greater protection for stakeholders ... As a consequence, resources that would have been best used to serve the community, including assistance provided to low income and disadvantaged people, are drawn into unnecessary administration and compliance costs ... A substantial reform project is needed to address ... the definition of charity; the overhaul of regulation related to incorporation and reporting; and the taxation and concessionary treatment of non profit organisations. (ACOSS sub. 118, p. 29)

These views echo the findings of previous and contemporary reviews (for example, IC 1995; SSA 2007; SSCE 2008) and research (for example, NRNO 2004a; ACG 2005a; ACOSS 2008b). Table 6.1 lists the main legislation and regulators dealing with incorporated NFPs.

While regulation associated with and embedded in government service agreements — often seen as regulation by stealth — constitute a major source of compliance costs, substantial savings have also been identified in registration and regulatory reporting. A report by the Victorian State Services Authority (SSA 2007) estimated that savings for incorporated associations in Victoria from more suitable regulatory reporting requirements and governance arrangements were \$2.6 million and \$5.5 million respectively.

The Australian, state and territory governments have committed to improving the quality of NFP regulation. Progress has been made in areas of direct impact on NFPs such as financial reporting and improving regulatory processes, and in other areas such as food safety and occupational health and safety legislation. Nevertheless, submissions (and recent inquiries such as the Senate Inquiry into disclosure regimes) indicate that much remains to be done.

NFPs' compliance costs are minimised when they have to face a single clear set of requirements — whether in regard to registration, tax endorsement or fundraising — with common reporting standards and requirements, and where one report satisfies most, if not all, obligations. The public benefits when it can easily access information on an NFP from a trustworthy source, as do philanthropists and government agencies. The challenge is to provide a regulatory system that offers these advantages, but that is proportionate to the risks posed by different types of NFPs.

**Table 6.1 Main NFP entity legislation and regulators across jurisdictions**

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Regulator</i>
Commonwealth	<i>Corporations Act 2001</i> <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>	Australian Securities and Investments Commission Office of the Registrar of Indigenous Corporations
New South Wales	<i>Associations Incorporation Act 1984</i> <i>(Associations Incorporation Act 2009</i> was passed in March 2009 and will come into operation in early 2010) <i>Cooperatives Act 1992</i>	Office of Fair Trading
Victoria	<i>Associations Incorporation Act 1981</i> <i>Cooperatives Act 1996</i>	Consumer Affairs Victoria
Queensland	<i>Associations Incorporation Act 1981</i> <i>Cooperatives Act 1997</i>	Office of Fair Trading
South Australia	<i>Associations Incorporation Act 1985</i> <i>Cooperatives Act 1997</i>	Office of Consumer and Business Affairs
Western Australia	<i>Associations Incorporation Act 1987</i> <i>Companies (Cooperative) Act 1943</i> <i>Cooperative and Provident Societies Act 1903</i>	Department of Commerce
Tasmania	<i>Associations Incorporation Act 1964</i> <i>Cooperative Act 1999</i>	Consumer Affairs and Fair Trading
ACT	<i>Associations Incorporation Act 1991</i> <i>Cooperatives Act 2002</i>	Office of Regulatory Services Office of Regulatory Services
Northern Territory	<i>Associations Act 2003</i> <i>Cooperatives Act 1997</i>	Consumer and Business Affairs Consumer and Business Affairs

Source: ATO (2009b).

## 6.2 Is a single national regulator needed?

Current regulatory oversight of NFPs at the Commonwealth level is spread across the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO), the Department of Environment, Water, Heritage and the Arts, and the Office of the Registrar of Indigenous Corporations (ORIC). Gilbert + Tobin found this an unacceptable situation, arguing:

... there is an urgent need to bring together the multiplicity of governance, taxation and fundraising regulatory arrangements, especially at the Commonwealth level ... (sub. DR288, p. 1)

Lyons, before the Senate inquiry, argued:

In the absence of a single regulator, governments lack data and knowledge of Australia's not-for-profit organisations and are therefore unable to develop appropriate policies to better regulate them and encourage their formation ... (SSCE 2008, p. 42)

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Participants to this inquiry reiterated this view. The National Association of People Living with HIV stated that ‘the lack of a central place to drive structural reform has contributed to the failure to achieve this to date’ and joined with ACOSS in urging governments to implement a national regulator as a priority (sub. DR300). PWC considered that a national regulator would encourage the creation of a sustainable platform of reform rather than a once-off review and would help facilitate continuous improvement (sub. 174).

The 2001 inquiry and the recent Senate inquiry concluded that an independent national commission was needed. The latter pointed to the successful implementation of Charities Commissions in countries comparable to Australia (England, Wales, New Zealand) as indicators of its likely value, noting that most NFPs are not members of a peak body and smaller organisations are unlikely to have the same level of advocacy (SSCE 2009).

In the Commission’s view, the case for a national regulator is equally compelling today. However, the Commission does not see a role for the Registrar in sector development, where states and territories have traditionally been active. Instead, it proposes that the national regulator’s responsibilities be limited to those relating to registration and reporting associated with demonstrating compliance with the legal requirements that underpin public trust and confidence in the NFP sector. As such, the Registrar’s responsibilities would be focussed around NFPs’ legal form and associated reporting requirements, endorsement for tax concessions, and fundraising.

### **6.3 Are legal forms for not-for-profit organisations adequate?**

Of the approximately 600 000 NFPs, the majority (some 440 000) are small unincorporated organisations (that is, they do not have a distinct legal status from their members). For the remainder of NFPs with a formal legal status, the most common corporate structures are incorporated associations under relevant state or territory Acts (136 000) or companies limited by guarantee (11 700) (registered with the ASIC). Other legal structures for NFPs include trusts; cooperatives (box 6.1); Indigenous corporations registered with the ORIC (box 6.2); religious organisations (including those which are statutory corporations); and organisations formed by Royal Charter or by a special Act of Parliament (SSCE 2008).<sup>1</sup>

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<sup>1</sup> For example, the *Royal Institute for Deaf and Blind Children Act 1998* (NSW).

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### Box 6.1 Cooperatives

Cooperatives are a form of mutual organisation which have existed in Australia since the mid-19th century. A central feature of a cooperative is that it is democratically controlled by its members. Voting is based on membership rather than on the number of shares held or the value of capital invested. A cooperative can be set up as a profit making organisation or as an NFP.

All states and territories in Australia have legislation which enables a cooperative to register and to become incorporated as a legal entity. Cooperatives' legislation is similar across jurisdictions and is based on a set of standard provisions developed in 1996 by the Standing Committee of Attorneys-General. However, differences exist between jurisdictions and any nationally agreed changes to legislation can take years to implement across all jurisdictions.

To overcome the problem of separate legislation in each state and territory, the Ministerial Council on Consumer Affairs has agreed to establish a regulatory scheme which applies uniform legislation for cooperatives throughout Australia and which, as far as is possible, is administered on a uniform basis. The Ministerial Council is currently considering a proposed *Australian Uniform Cooperative Laws Agreement*. A draft *Cooperatives National Law* is being developed to support this proposed agreement. The draft legislation is available for comment.

*Source:* NSW Department of Services, Technology and Administration (pers. comm., 7 September 2009).

Some participants expressed significant dissatisfaction with the current mix of legal form (for example, BaptistCare, sub. 90; RSPCA, sub. 116). Many concerns relate to NFPs operating across state/territory boundaries, which need to be incorporated in several states, the point raised by the CPA Australia being typical:

... the laws applying to incorporated not-for-profit entities differ depending on their place of incorporation. CPA Australia considers that the current approach is not likely to be in the public interest. (sub. 152, p. 1)

Others raised the difficulty and cost of becoming a company limited by guarantee as an issue:

The fact that a company limited by guarantee is regulated for many purposes under the Corporations Act as if it is a public company, poses compliance burdens and costs that can be disproportionate taking into account public interest concerns and resources available to smaller NFPs. (Australian Conservation Foundation, sub. DR242, p. 5)

Becoming a [company limited by guarantee] ... is not a simple exercise and can take a significant amount of time and effort (Gilbert + Tobin, sub. DR288, p. 2).

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## Box 6.2 Indigenous corporations

The Office of the Registrar of Indigenous Corporations (ORIC) is an independent statutory office holder appointed by the Minister for Indigenous Affairs under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. ORIC has powers to intervene that are similar to those exercised by ASIC.

The Act requires ORIC to:

- register Indigenous groups that want to become corporations
- help Indigenous corporations run properly, according to their own rules and cultures, and to make sure they do not break the law
- offer support, advice and training to help Indigenous corporations do the best job for their communities.

ORIC must conduct these activities in a manner consistent with principles of sound corporate governance and in the context of current and emerging Australian and international law and practice on good corporate governance.

*Source:* Office of the Registrar of Indigenous Corporations website ([www.oric.gov.au](http://www.oric.gov.au)).

## Should there be a new single national legal form?

The concept of a single national legal form, covering all NFPs (irrespective of size or their degree of interaction with the public), was taken up by Woodward and Marshall (2004) and the Senate inquiry (SSCE 2008). As more fully discussed in the Commission's draft report, this idea has many attractive features and continues to find support with a number of submissions suggesting a new single legal form to replace existing forms. Such a legal form could cover different sized agencies through layered reporting and other requirements.

While potentially attractive for new entities, migration of all current entities to the new form would be required to address the concerns about disparate requirements. Working out what current requirements should stay and which should go would also be challenging and take considerable time to implement. Further, NFPs and their advisors are generally familiar with companies limited by guarantee and state and territory incorporated associations structures. In all, the transition costs would be significant:

... any proposal to migrate existing not-for-profit organisations to some new form of incorporation is unworkable because of the massive legal costs that would be incurred by not-for-profit organisations arising from such a proposal. (Flack 2008, p. 4)

In addition, in some cases there is a need for a specialised form, although this might be only be required for a transition phase. For example, ORIC supports and

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regulates around 2500 corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (box 6.2). Many of these corporations are in remote locations and publicly funded, but some receive fees, royalties and compensation. Most but not all Indigenous corporations are NFP and face similar issues to other NFPs. However, often they face exacerbated circumstances in relation to corporate governance, and need a more flexible means of operating and require greater support to maintain a stable operating environment.

In the Commission's view the current variety of legal forms, subject to the reforms proposed, offer scope for best fit, just as in the for-profit area where legal forms range from sole traders through to public corporations. For example, the Association of Independent Schools of Victoria noted:

... independent schools adopt legal structures that best serve their needs as a school. ... The legal structures adopted reflect the size and scope of the individual school operations and the diversity of the independent school sector ... (sub. 106, p. 6)

That said, the shortcomings of existing legal forms need to be addressed. The concerns fall broadly into three categories: the initial choice is confusing for NFPs (leading to the 'wrong' form being adopted); the compliance requirements of legal forms are inappropriate; and the legal forms are inconsistent across jurisdictions (which impose unnecessary costs). These concerns are compounded where migration across legal forms is difficult or prohibitively costly.

### **Confusing options, high costs to migration, or poor advice?**

For NFPs considering a company limited by guarantee structure, the Corporations Act is a daunting and confusing body of legislation. The Law Council of Australia (2008, p. 9) has described it as '... an immensely long, complicated and inaccessible piece of legislation, the overwhelming majority of whose provisions are irrelevant to NFPs'. A similar problem for small business has been addressed via a separate part in the Corporations Act and a plain English guide to those provisions that apply to them. To this end, PilchConnect suggested a similar approach for NFPs:

... an additional chapter in the existing Corporations Law to deal specifically with NFPs. This should include a plain English guide for NFPs, and the fees and penalties should be lower and based on a sliding scale according to size. (sub. 131, p. 11)

In view of the proposed reforms embodied in the Corporations Amendment (Corporate Reporting Reforms) Bill 2010 (see below), which if implemented are expected to substantially increase the number of NFP companies limited by guarantee, the case for a similar approach for NFPs is compelling.

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This confusion about what the legal form implies is less of an issue for incorporated associations. However, differences across jurisdictions can confuse, and efforts to harmonise, such as with the cooperatives law, would be welcomed by the sector. Such harmonisation would also facilitate migration across legal forms and reduce opportunities for forum shopping across jurisdictions:

Free migration between forms and jurisdictions should not create a problem with ‘forum shopping’ provided that legislation in each jurisdiction is consistent and compliance requirements are appropriate. (Department of Commerce (WA), sub. DR313, p. 5)

Transaction costs (variously capital gains tax, stamp duties and registration fees) represent a significant impediment to NFPs migrating to different legal forms.<sup>2</sup> Governments should seek to minimise imposts which inhibit NFPs moving to more efficient and effective legal forms.

To some extent, governments are acting on this. Gilbert + Tobin (sub. DR288) noted section 82 of the *Associations Incorporations Act 1991* (ACT), which provides for a voluntary transfer of an incorporated association to a company limited by guarantee. Similarly, the Queensland Government Department of Employment, Economic Development and Innovation is considering amendments to the *Associations Incorporation Act 1981* to allow associations to migrate to the *Corporations Act 2001* as a company limited by guarantee and to do so without incurring transfer fees and capital gains tax liability (sub. DR301).

Facilitating migration to a different legal form increases the risk of ‘forum shopping’, where NFPs change their legal form in order to be subject to less regulatory scrutiny. The Australian Catholic Bishops Conference noted that forum shopping exists with current arrangements. It considered it is not completely avoidable, but requiring an organisation to explain why it wished to change arrangements would mitigate the problem (sub. DR201).

Participants at the Commission’s roundtable on regulation argued that better advice when NFPs are contemplating what legal form to take would relieve many of the problems. The Victorian State Services Authority (SSA) 2007 report recommended that regulators provide a rolling program of regular, face-to-face training and education to NFP associations about corporate structures and related compliance obligations (SSA 2007). More recently, Passey and Lyons (2009), in a study of associations incorporated in New South Wales, found that the regulator could reduce the number of associations dissatisfied with their legal form by a more creative and proactive use of its website.

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<sup>2</sup> For NFPs with contracts for service delivery, changing legal form can be difficult unless permitted within the contract or transfer of contracts can be achieved without undue cost.

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Better advice is emerging from initiatives within the sector, from NFP peak bodies and purpose specific entities. For example, PilchConnect (sub. 131) offers assistance to those involved in community organisations that want to establish a legal entity, be it an incorporated association, a company limited by guarantee, cooperative, or other form. In addition, Our Community, a for-profit organisation established in 2000 (sub. 115), indicated that it provides resources, training, advice and support to Australia’s community groups and schools.

Overall, a clear message from the consultations is the importance of targeted, accurate and timely advice to assist both existing and new NFPs. The sector is so diverse — both in size and function — that there is limited scope for common advice, although regulators should ensure that they provide clear descriptions of requirements associated with the legal forms they regulate.

### **Are the requirements of the different legal forms appropriate?**

The Australian Evangelical Alliance’s views exemplified the criticism of the appropriateness of current legal forms:

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

[1] Compliance costs

[2] Complexity within the Acts

[3] Inappropriateness of some rules. (sub. 55, pp. 10-11)

A number of governments have moved to address some of these concerns, notably streamlining requirements and ensuring they are proportionate to the size and hence risk of the association.

At the state and territory level, for example, New South Wales, Victoria, Queensland and Tasmania have reviewed their Associations Incorporation Acts and introduced (or plan to introduce) simplified auditing and reporting requirements and operating and governance arrangements in an effort to reduce the regulatory burden faced by NFPs.

In addition to these government reviews of requirements under their Associations Incorporations Acts, other initiatives (such as the standard chart of accounts and changing accounting standards for NFPs) should ease the burden of financial reporting associated with any particular legal form.

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At the Commonwealth level, reforms proposed to the company limited by guarantee form in the Corporations Amendments (Corporate Reporting Reform) Bill 2010 address the disproportionate cost of reporting and inappropriate focus of the legal form through a three tiered differential reporting framework (box 6.3). The reforms also streamline assurance requirements and simplify disclosures in the director's report, recognising the focus of NFP companies is generally purpose or objective driven. While small (first tier) companies would be exempt, second and third tier companies would only need to prepare a simplified report containing:

- a description of the short- and long-term objective of the NFP
- the NFPs strategy for achieving those objectives
- the NFPs principal activities during the year

**Box 6.3 Proposed differential reporting framework for companies limited by guarantee**

**First tier**

First tier companies are those with an annual revenue of less than \$250 000 and which do not have deductible gift recipient (DGR) status.

These companies would be exempt from preparing financial and directors' reports for lodgement.

**Second tier**

Second tier companies are those with an annual revenue of less than \$250 000 that have DGR status and those with an annual revenue of \$250 000 or more but less than \$1 million, irrespective of whether it has DGR status.

These companies would:

- prepare (and lodge) a financial report, which they could elect to have reviewed rather than audited
- prepare (and lodge) streamlined director's reports, rather than a full director's report
- be subject to a streamlined process for distributing the annual report to members.

**Third tier**

Third tier companies are those with an annual revenue of \$1 million or more, irrespective of whether they have DGR status.

These companies would:

- continue to prepare (and lodge) an audited financial report
- prepare (and lodge) streamlined director's report, rather than a full director's report
- be subject to a streamlined process for distributing the annual report to members.

*Source:* Parliament of Australia (2009).

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- how those activities assisted in achieving the NFP objectives
  - how the NFP measures its performance, including any key performance indicators used (Parliament of Australia 2009).

The Commission endorses the thrust of the reporting reforms proposed in the Amendment Bill as they will make incorporation under the Corporations Act more attractive to NFPs, reducing the need for a new national legal form as recommended in the draft report. However, the Commission is concerned about the no reporting requirement for first tier companies, preferring that they be required to prepare some form of directors and financial reports and to have them available on request.

Appropriate safeguards would be put in place requiring companies limited by guarantee to prepare a financial report or a director's report if they are directed to do so by ASIC or a least 5 per cent of members

Given the current review, it is opportune to examine other aspects that could better tailor the company limited by guarantee legal form to meet the specific needs of NFPs. For example, The Law Council of Australia raised a number of issues when giving evidence to the Senate Inquiry ( 2008).

One area that should be considered is the provisions relating to the disposal of assets on the winding up or restructuring which are not consistent with the prohibition on distribution of surpluses.<sup>3</sup> Currently, the ATO requires this clause to be part of an NFP's constitution or charter as a condition for income tax exemption. Including this in the legal form removes the potential for changing tax status, and removing such clauses, prior to dissolution — which limits the scope for rorting the tax concessions accorded to NFPs.

### **Are differences in regulation across jurisdictions problematic?**

NFPs are increasingly operating across state boundaries. For these NFPs, the inconsistencies between similar legal forms and the cost of complying with differing legislation are a major source of concern. For example, the Institute of Chartered Accountants in Australia noted:

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<sup>3</sup> The states/territories have various rules governing the distribution of assets upon dissolution of an incorporated association. For example, distribution of assets to members upon dissolution is prohibited in ACT, NSW, and SA legislation. Queensland's Associations Incorporation Act, however, is not clear on the prohibition of distribution of assets upon dissolution, stating that distribution is subject to agreement or in accordance with its governing documents without restrictions. Similarly, Victoria's Act allows the distribution of surplus assets to members where a special resolution to the contrary is not passed by the incorporated association or the rules of the association do not prohibit this action.

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... the legislation governing these various structures is both inconsistent between the types of legal structures and inconsistent within the structures. For example, Incorporated Associations are controlled by individual state legislation, much of which is inconsistent when compared state to state. NFPs using this incorporated association structure now increasingly find themselves operating across state boundaries and therefore their managers and advisers need to be familiar with a number of differing regulatory regimes. (sub. 70, attach. B, p. 5)

A more suitable national legal form provides an option for NFPs that operate across jurisdictions. This was recommended in the Industry Commission's 1995 report on *Charitable Organisations in Australia*. That report concluded that a uniform category of incorporation was needed to ensure that the community receives the information it requires in return for the favoured tax benefits received by NFPs (IC 1995).

The alternative is for the states and territories to harmonise their associations incorporation legislation and mutually recognise registration across jurisdictions. While there is merit in harmonisation in many aspects (see below), mutual recognition can be costly to administer and is unnecessary if a suitable national legal form is available.

As discussed above in regard to the single legal form, and unlike important deposit-taking institutions, the case for centralising all regulation at the Commonwealth level is not strong. The Commonwealth should offer but not mandate a viable alternative in the form of the NFP companies limited by guarantee, modified to provide proportionate reporting and other requirements.

This raises the question of whether state/territory incorporation responsibility should be restricted to smaller NFPs, perhaps those with annual revenues below \$150 000 as canvassed in the draft report. This received some support, such as the Graham F Smith Peace Trust (sub. DR290) and, with a higher limit, the Australian Catholic Bishops Conference (sub. DR201) and Pine Rivers Neighbourhood Association (sub. DR307). Others, such as Berry Street and the New South Wales Government, opposed any limit: the former arguing it was an unnecessary restriction on an organisation's options for incorporation (sub. DR283) and the latter noting that while many NFPs in NSW would exceed the \$150 000 limit they operate solely within New South Wales and neither want, nor need, a national legal form (sub. DR315). The Victorian Government estimated that, with this limit, in excess of 3000 incorporated associations would be required to transfer to the national level (sub. DR305).

Given this mixed response and applying the principle that, with good information and ease of migration, NFPs will choose the legal form that is *actually* more appropriate for them, the Commission is not recommending any threshold be

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applied to state and territorial incorporation at this time. However, this should be subject to ongoing review as the impacts of the reforms proposed in this report become evident. More importantly, the case for such a threshold restricting the regulation of NFPs at state/territory level to smaller agencies becomes stronger if the states and territories are unable to implement the reforms suggested below.

There is, however, a stronger case for harmonisation across a number of aspects of incorporated associations legislation. The Tasmanian Government observed the differing regulation of incorporated associations across jurisdictions and noted that it would support a review to assess the merit of harmonisation (sub. 170).

State and territory regulators considered that over 90 per cent of state-based NFPs (over 122 000) wish to remain as incorporated associations under their respective state/territory legislation (pers. comm., November-December 2009). However, this does not mean that they have no interaction with other jurisdiction's regulatory requirements. Some NFPs operating in multiple jurisdictions will prefer the incorporated association form and variations among jurisdictions add to their compliance costs. In addition, NFPs that apply for Commonwealth tax concession status, or Commonwealth government grants or contracts, are required to submit corporate and/or financial statements to support their applications. If the comparable statements required by state/territory regulators were consistent in content and format to those required by the Commonwealth, this reporting burden on NFPs would be substantially reduced.

As the Victorian Government noted, 'Uniform associations legislation would also facilitate development of the proposed 'single portal' for the public record of corporate and financial information' (sub. DR305).

Such harmonisation would also provide the opportunity to clarify provisions relating to the distribution of assets on the dissolution or restructuring of NFPs and treatment on migration of legal form (see above and section 6.6).

The approaches used for bringing consistency to cooperatives legislation (box 6.1) or being contemplated for fundraising legislation (section 6.5) provide a precedent for harmonising jurisdictions' association incorporation regimes and reporting requirements.

### **Is a new legal form needed for small unincorporated associations?**

The majority of NFPs are informal entities with no separate legal form; that is, unincorporated NFPs that have no legal personality except for their individual members. This lack of legal form has advantages such as simplicity of operating

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without the regulatory oversight allows the NFP to be flexible, private and relatively easy to manage.

However, there are also disadvantages, as noted by Sievers (1996):

- there is no perpetual succession — property belongs to individual members not to the association. It must be held in the names of the members or by trustees
- the organisation cannot receive a gift, although members can on its behalf
- the organisation cannot enter into an enforceable contract. It is very difficult for the organisation to sue or to be sued, and there is uncertainty about the personal liability of members of the organisation or its committee
- it has been very difficult for dissatisfied members to obtain judicial review of the organisation's decisions
- it can be very difficult to wind up the organisation without the intervention of the Courts.

These features reduce the unincorporated NFP's ability to receive any government grant/contract or foundation grant. In addition, they mean that individual members are exposed to the risk of liability. The Commission was told that it is largely the latter reason that appears to have motivated a rise in the number of NFP incorporated associations in recent years.

These disadvantages are largely resolved upon incorporation. But incorporation imposes its own burdens, including increased accountability and responsibility.

CPA Australia (sub. DR224) considered the disadvantages of unincorporated NFPs to significantly exceed the advantages, and that it is not in the public interest to continue to allow NFPs to not have a distinct legal status from their members.

In his submission, Lyons outlined an alternative model (used in many of the states that comprise the United States) for small NFPs to obtain the benefits of incorporation:

... these states have adopted model legislation that overrides the way the common law applies to unincorporated associations so as to allow them to hold property, to sue and be sued as an entity and to protect individual members from wrongs done by the association. This protection is automatic and requires no registration by the association ... (sub. 169, p. 26)

However, the Victorian Government argued that the evidence did not support the need for a new legal form for unincorporated associations:

Ongoing high levels of incorporation under the [Associations Incorporation Act] (currently running in excess of 1000 organisations per year) do not indicate any

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reluctance by small organisations to seek incorporation as an association. (sub. DR305, p. 15)

Similarly, the Consumer Protection Division of the Department of Commerce (WA) (sub. DR313), noted that it is not aware, in conducting its education and compliance activities, of any demand within the NFP sector for a new legal form for small unincorporated associations.

The Victorian Government (sub. DR305) also expressed concern that a new ‘minimal’ legal entity could reduce accountability if used by some to move from incorporated association status in an effort to shed regulatory oversight. The ACT Government (sub. DR273), too, did not support a new legal form, noting that it was not prudent to register NFPs with no commensurate responsibilities expected of them.

On balance, there appears to be no clear case for a new minimal legal entity for unincorporated NFPs.

#### RECOMMENDATION 6.1

***The Australian Government should amend the Corporations Act to establish a separate chapter relating to not-for-profit companies limited by guarantee. This should:***

- ***embody the principles of proportionality in relation to reporting, fees and charges***
- ***provide clear rules on the disposal of assets in the event of the company being dissolved or restructured, in addition to the proposed prohibition on the payment of dividends***
- ***include a plain English guide (as currently exists for small and medium scale enterprises)***

***As part of this process, the Australian Government should, in consultation with stakeholders, examine whether there are additional requirements that are inappropriate or unduly restrictive for not-for-profit organisations that should also be addressed.***

#### RECOMMENDATION 6.2

***Australian governments should, through the Council of Australian Governments Business Regulation and Competition Working Group, pursue harmonisation of state and territory based incorporated associations legislation, with an initial focus on:***

- ***aligning not-for-profit organisations’ public corporate and financial reporting requirements***

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- *rules on the distribution of assets on the dissolution or restructuring of a not-for-profit organisation*
  - *allowing not-for-profit organisations to migrate from one legal form to another and to move to the Commonwealth jurisdiction without onerous transaction costs.*

## **6.4 Reporting requirements for not-for-profit organisations**

NFPs face four main types of reporting to government agencies:

- corporate and financial reporting associated with the legal structure under which they are incorporated
- requirements of fundraising legislation (discussed in section 6.5)
- information required for endorsement for concessional tax treatment (discussed in section 6.6 and chapter 7)
- financial, governance and performance information required for obtaining or acquitting government funding (grants, etc), or government funded service delivery contracts (discussed in chapters 11 and 12).

In all cases, the requirements vary, often significantly, and there is scope for greater consistency in reporting requirements and for sharing of information across agencies. In addition, reporting requirements should be proportionate to the risks posed by an NFP's activities, and the value of the information for improving policy and resource allocation.

### **Corporate and financial reporting**

Corporate and financial reporting requirements vary across legal forms. Reporting by companies limited by guarantee is determined by the *Corporations Act 2001*, irrespective of the jurisdiction in which they operate. Reporting by incorporated associations is determined by the relevant Associations Incorporation Act in each state/territory. Reporting by NFPs established under Royal Charter or their own Acts of Parliament are set by the relevant constituent document.

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Under the *Corporations Act 2001*, companies limited by guarantee are required to keep written financial records that correctly record and explain their transactions and financial position and performance, and enable true and fair financial statements to be prepared and audited. They are generally required to prepare and lodge a public financial report and directors' report for each financial year that consists of:

- the financial statements for the year
- the notes to the financial statements
- the directors' declaration about the statement and notes.

The financial report must comply with Australian Accounting Standards, which are effectively International Financial Reporting Standards. The report must give a true and fair view of the financial position and performance of the company limited by guarantee. The financial statements must be audited by a registered company auditor in accordance with the provisions of the Corporations Act. Enforcement of the Corporations Act is undertaken by ASIC.

As noted above (box 6.3), the proposal to amend these requirements should significantly reduce the reporting burden for smaller NFP companies limited by guarantee.

Reporting by Indigenous corporations to ORIC is already proportionate to the size of the company, with three tiers of requirements (table 6.2). Only around 30 large corporations are required to lodge a general report, audited financial report and directors' report similar to companies incorporated under the Corporations Act.

Reporting requirements for NFPs incorporated under state/territory legislation have generally been much less onerous than for companies limited by guarantee, although requirements vary between state and territories. Enforcement of the provisions of the state/territory legislation is generally undertaken by an agency such as the New South Wales Office of Fair Trading or the Victorian Department of Consumer Affairs (table 6.1).

Corporate and financial accountability is an important issue for NFPs as it is a central element in building and maintaining trust in individual NFPs and in the sector as a whole. Although the primary responsibility for accountability rests with NFPs' members and their boards, government reporting requirements can inhibit or enhance NFP accountability.

**Table 6.2 Reporting requirements for corporations under the Corporations (Aboriginal and Torres Strait Islander) Act**

<i>Size and income of corporation</i>	<i>Report required</i>
Small corporations with a consolidated gross operating income of less than \$100 000.	1. General report only
Small corporations with a consolidated gross operating income of \$100 000 or more and less than \$5 million.	1. General report 2. Audited financial report or financial report based on reports to government funders (if eligible)
Medium corporations with a consolidated gross operating income of less than \$5 million.	
Large corporations or any corporation with a consolidated gross operating income of \$5 million or more.	1. General report 2. Audited financial report 3. Directors' report

Source: ORIC (2009).

In its 1995 report on *Charitable Organisations in Australia*, the Industry Commission (IC 1995) identified significant problems with the then system of accountability reporting, including a lack of:

- consistent data collection processes
- public access to information
- standardisation of financial reporting and other information.

Since then, there has been limited progress in addressing these problems, some of which has originated within the NFP sector:

Many [non-governmental organisations] are moving to adopt current best practice in the operation of their boards and their administration. ... [for example] Virtually the entire membership of the international development sector in Australia has signed up to a Code of Conduct developed by the Australian Council for International Development, which includes auditing processes and a complaints handling process if members do not uphold the standards of the Code ... (Staples 2008, p. 278)

But sector-wide problems remain. In its 2005 report, the Allen Consulting Group noted:

Accounting treatments in the sector frequently differ because there is little guidance about how to apply generic standards in a not-for-profit context. As a result, compliance costs are high and consistent and relevant financial information on the sector is scarce (ACG 2005a, p. vi).

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Moreover, submissions emphasised that much is still needed to be done. The National Roundtable of Nonprofit Organisations, for example, stated:

... there are significant inconsistencies in reporting and other requirements imposed in different States and Territories pursuant to their very different Associations Incorporations laws. There are compelling arguments ... for reform of accounting and reporting requirements ... (sub. 105, p. 11)

Similarly, the Institute of Chartered Accountants in Australia argued:

... the legislation that governs not-for-profits is often out of date, having not kept pace with developments in accounting practice and corporate governance. (sub. 70, attach. B, p. 5)

The paper [on *Improving Corporate Reporting and Accountability*] published by Treasury in 2007 specifically asked respondents a question ‘Do you consider there is a need to harmonise the financial reporting requirements of companies limited by guarantee and incorporated associations to provide a consistent reporting framework for not for profit entities in Australia?’ The submissions that are publicly available overwhelmingly support harmonisation. (sub. 70, attach. B, p. 6)

And with regard to accounting standards applicable to NFPs, Grant Thornton stated:

... there should be a specific Accounting Standard and guidance applicable for NFP entities, which consolidates existing NFP paragraphs in the Australian Accounting Standards and includes additional disclosure requirements relevant to their operations. ... It is clear that the existing Australian Accounting Standards that are re-badged International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) are developed solely for profit-oriented entities and primarily with the securities market in mind, and hence do not take into account the specific characteristics of NFPs nor the users of NFP financial statements. (sub. 83, p. 2)

### *Development and adoption of standards for financial reporting*

The Australian Accounting Standards Board (AASB) project — ‘Disclosures by Private Sector Not-for-Profit Entities’ — which began in August 2009, is looking at the different financial reporting needs of NFP entities relative to for-profit entities (box 6.4). This latest initiative is a response to recommendation 13 of the recent Senate inquiry into disclosure regimes for charities and not-for-profit organisations.

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**Box 6.4 AASB Project: Disclosures by Private Sector Not-for-Profit Entities (August 2009)**

The AASB background paper to this project states:

Most existing Australian Accounting Standards that include disclosure requirements apply to all reporting entities. ... Most of the AASB's Standards are derived from International Financial Reporting Standards, which are not written specifically with private sector not-for-profit entities in mind. Therefore, there is a risk that the costs incurred by these entities to comply with the existing disclosure requirements outweigh the benefits to users of the financial reports that contain disclosures.

Even if the existing disclosure requirements provide useful information for users, there is a high risk that other information specific to private sector not-for-profit entities and needed by users is not being disclosed, or is not being disclosed in a consistent manner. Many existing disclosures focus on financial aspects, whereas the non-financial aspects of private not-for-profit entities are often important to users. This type of reporting includes what is often described as service performance reporting.

Although many private sector not-for-profit entities have filled the void by making voluntary disclosures, there is a lack of comparability across entities. For example, of interest to many users is information about the efficiency with which charities have performed, such as the ratio of administration costs to donations, but there is not a consistent basis for calculating such a key performance indicator. (pp. 1-2)

To address these concerns, the AASB (2009) is to establish (by October 2009) a Project Advisory Panel with a view to producing a new standard covering financial and non-financial disclosures by August 2010.

Other initiatives also offer scope to address NFPs' concerns and deliver consistent, proportionate reporting, in particular the Standard Business Reporting project if it was extended to include NFPs and the Standard Chart of Accounts (box 6.5).

The Commission considers that the application of the Standard Business Reporting Initiative and the national adoption of the Standard Chart of Accounts to NFP financial reporting will assist in improving consistency among the jurisdictions for both disclosure requirements (based on size) and enforcement of financial reporting regulations.<sup>4</sup>

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<sup>4</sup> In December 2009, COAG agreed to allow NFPs to meet a range of requirements with one system of a Standard Chart of Accounts for NFPs in receipt of government grants (COAG 2009b). Further, COAG agreed to a schedule for the implementation for gaming and fundraising activities of NFPs (COAG 2009c).

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## Box 6.5 **Standard Business Reporting Initiative and Standard Chart of Accounts**

### *Standard Business Reporting initiative*

The Standard Business Reporting initiative is a joint project involving Commonwealth and State Governments, as well as the software developers and other services providers such as accountants and book keepers.

Standard business reporting will remove unnecessary and duplicated information from government forms through the creation of a common reporting language, based on international standards and best practice.

To help smaller organisations, this common language will be integrated into major retail accounting software such as MYOB and Quicken, and a number of specialist packages. Larger organisations with custom-built accounting systems will also be able to modify their systems so they can 'talk' directly to government systems.

Organisations will then be able to sign on to a single electronic interface and submit information directly to government from their accounting software. This one submission will then be directed to the relevant government agencies to meet multiple reporting requirements.

Standard business reporting covers returns to the Australian Taxation Office, State Revenue Offices, ASIC and the Australian Bureau of Statistics. Over time it may be possible to add other agencies such as state Fair Trading Departments to the system.

### *Standard Chart of Accounts*

In a project commencing in 2002, the Australian Centre for Philanthropy and Nonprofit Studies and the School of Accountancy at the Queensland University of Technology developed a Standard Chart of Accounts and data dictionary for small nonprofit organisations that receive government funding.

The project aims were to rationalise the acquittal requirements placed on NFPs by government funders. Research found little consistency between departments in the financial treatment and accounting terms used in grant and tender reporting, creating a heavy compliance burden on organisations when acquitting grants. Evidence supported the notion that these organisations manually recalculated and rekeyed their financial transactions when reporting on expenditure in specific programs.

The Standard Chart of Accounts provides a common approach to the capture of accounting information for use by the nonprofits, government agencies and other interested parties. It is a tool designed primarily for small to medium NFPs which typically do not have an accounting department or a sophisticated accounting system. Larger NFPs have adopted the data dictionary component of the standard chart of accounts aligning their systems to comply with a consistency across the sector.

*Sources:* Tanner (2008); QUT (2009).

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*Report once, use often — the value of a national portal for information*

Standardised reporting enables a single portal for lodgement and access to corporate and financial information that could be used for corporate and financial health checks for government contracting purposes (chapter 11). It is also key element to any national database or aggregation of financial reporting for measurement and evaluation at any level (chapter 5). In its submission, the FIA stated that a standardised system of reporting was necessary to meaningfully measure and compare costs and outputs (sub. 76).

There is scope to develop a national portal for key corporate and financial data for public and government access. NFPs that are incorporated at the Commonwealth level could be required to lodge such information once only and could be accessed for multiple purposes. Other NFPs could also voluntarily lodge such information on an ‘opt in’ basis. As noted, harmonising jurisdictions’ associations incorporated legislation, or at least the parts dealing with corporate and financial data, would allow such a portal to link to state and territory based information systems. The principle of ‘report once, use often’ could be entrenched in such a process and is consistent with the direction of the Standard Business Reporting initiative.

## **6.5 Fundraising regulation**

Fundraising regulation aims to ensure public confidence and trust in fundraising and, in doing so, increase the public’s willingness to participate and donate to fundraising activities. It operates to protect the NFP sector and the public against persons or organisations falsely identifying themselves as an NFP, or misrepresenting the purpose of their organisation or fundraising activities. Regulation also operates to prevent fundraising activities resulting in public nuisance or inappropriate invasion of privacy. Regulatory requirements for record-keeping and public reporting of details regarding fundraising activities are designed to support trust and confidence in fundraising (IC 1995; SSA 2007). This is particularly important in the face of growing public demand for greater transparency in the fundraising activities of NFPs.

### **Who regulates fundraising?**

Fundraising activities of NFPs are mainly subject to state and territory government regulation, although Commonwealth and local government regulation is also relevant.

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At the Commonwealth level, fundraising is mainly regulated under three areas of legislation:

- the *Corporations Act 2001*, with regards to companies seeking loans from the public
- the *Australian Securities and Investments Commission Act 2001*, where ASIC may require NFPs subject to its regulatory oversight to provide it with fundraising disclosure documents, such as prospectuses or offer information statements
- the *Trade Practice Act 1974*, insofar as it deals with misleading or deceptive information related to fundraising activities.

State and territory legislation regulates the fundraising activities of NFPs, which include activities such as public collections, raffles, bingo and art unions. Most jurisdictions have separate legislation covering fundraising and gambling and most also have separate regulators to administer each of these activities. The exceptions are the Northern Territory (which regulates gambling but has no fundraising legislation) and New South Wales and South Australia (which have one regulator covering both fundraising and gambling activities) (table 6.3).

Local governments manage and regulate the use of public places. Accordingly, fundraising activities undertaken in public places may be subject to local government regulation. This regulation can include:

- ensuring that the proposed activity is permissible under the relevant planning policy, planning scheme or local environment plan
- providing evidence of public liability insurance cover for the event, sufficient security and adequate toilet facilities
- obtaining permits for preparing and selling food on site, operating electrical equipment, closing streets and selling alcohol
- providing evidence that any rides (for example, jumping castles or merry-go-rounds) comply with Australian standards, especially occupational health and safety laws (ATO 2008).

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**Table 6.3 State and territory fundraising legislation and regulators**

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Regulator</i>
New South Wales	<i>Charitable Fundraising Act 1991</i> <i>Lotteries and Art Unions Act 1901</i>	Office of Liquor, Gaming and Racing
Victoria	<i>Fundraising Appeals Act 1998</i> <i>Gambling Regulation Act 2003</i>	Consumer Affairs Victoria Victorian Commission for Gambling Regulation
Queensland	<i>Collections Act 1966</i> <i>Charitable and Non-Profit Gaming Act 1999</i>	Office of Fair Trading Office of Gaming Regulation
South Australia	<i>Collections for Charitable Purposes Act 1939</i> <i>Collection for Charitable Purposes Act 1939 — Code of Practice</i> <i>Lottery and Gaming Act 1936</i>	Office of Liquor and Gambling Commissioner
Western Australia	<i>Charitable Collections Act 1946</i> <i>Gaming and Wagering Commission Act 1987</i>	Department of Commerce Office of Racing, Gaming and Liquor
Tasmania	<i>Collections for Charities Act 2001</i> <i>Gaming Control Act 1993</i>	Consumer Affairs and Fair Trading Tasmanian Gaming Commission
Australian Capital Territory	<i>Charitable Collections Act 2003</i> <i>Lotteries Act 1964</i>	Office of Regulatory Services ACT Gambling and Racing Commission
Northern Territory	<i>Gaming Control Act 1993</i>	Racing, Gaming and Licensing Division, Department of Justice

Source: ATO (2009b).

## What are the problems with fundraising regulation?

While the need for fundraising regulation is well recognised and supported by the NFP sector (SSA 2007), participants identified differing state and territory fundraising legislation as a major problem for the sector. Differences cited by participants included variations in jurisdictions' definitions of 'fundraising activities', reporting requirements, registration requirements and exemptions (Flack, sub. DR186). In addition, some jurisdictions focus on regulating NFP fundraising activities while others regulate NFP organisations that undertake fundraising. More recently, some states (for example, South Australia) are seeking to introduce separate codes of conduct, with little regard to the sector's own code of practice, or what could be achieved through a national approach. The danger of 'knee jerk' reactions to examples of poor practice by fundraisers is of concern.

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More generally, the National Breast Cancer Foundation described current state and territory legislation as:

... fragmented, inefficient; fails to deal adequately with national fundraising appeals; fails to regulate modern trends in fundraising; and in consequence does not adequately protect the community from inappropriate or fraudulent fundraising activities. (sub. 98, p. 2)

The submission from the Fundraising Institute Australia (FIA)<sup>5</sup> exemplified participants' views on how this issue affected NFPs:

The regulatory burdens faced by nonprofit organisations operating across jurisdictions are significant, particularly in fundraising. Due to the varying requirements of state and territory legislation and regulation, it is not possible for a national organisation to run a single national fundraising campaign. In order to comply with various jurisdictions' regulation, national campaigns must be tailored for each state or territory. This presents a significant drain on resources and capacity for national organisations, which adversely impacts service delivery and operational effectiveness. (sub. 76, p. 10)

The significance of this burden is indicated by the number of NFPs affected, information on which was presented to the recent Victorian State Services Authority's review of not-for-profit regulation:

A 2005 survey of FIA members indicated that ... 50 per cent worked across state borders, and are therefore currently required to meet different regulations in each state in which they fundraise. (SSA 2007, p. 72)

Moreover, this number is likely to grow in view of the trend to merging state organisations into larger national charities (SSA 2007) and as a result of technological change:

This unnecessary red tape continues to hinder NFPs in the delivery of their services and has a real impact on the effectiveness of the sector as a whole, particularly as more NFPs engage in cross-border fundraising through the use of new technologies. (PilchConnect, sub. 131, p. 15)

A further indication of the burden is the added cost to individual NFPs, which can be substantial. The FIA, for example, drew attention to World Vision Australia, which has stated that reporting in line with inconsistent fundraising legislation costs it at least \$1 million per year (sub. 77). In some cases, as the National Roundtable for Nonprofit Organisations indicated, these costs are such to prevent some entities from national fundraising:

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<sup>5</sup> FIA is the peak body for professional fundraising. Its members include both individuals — some 1600 individual members working in around 1000 charities and nonprofit organisations — and organisations — more than 60 organisational members with a combined turnover in excess of \$1.1 billion and thousands of employees and volunteers (FIA, sub. 76).

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The Music Council of Australia is registered to fundraise in one state despite its being a national organisation. The Council's Executive Director, states 'it is a time consuming process [to register to fundraise in each state] and beyond the resources of MCA'. (sub. 105, p. 13)

Other significant, but lesser, problems cited by participants was that state and territory legislation was outdated (for example, in defining what fundraising covers and in dealing with new forms of fundraising, particularly electronic forms that fall under Commonwealth responsibility) and imposed inappropriate reporting requirements (for example, either unmindful of the scale of NFPs or mandating information on the proportion of fundraising expenses to total fundraising revenue which had little practical value (Flack 2004)).

### **What regulatory reform is needed?**

With regard to the main problem identified by participants, a nationally consistent approach to fundraising would significantly lessen the regulatory burden faced by NFPs operating across jurisdictions. This issue is being investigated by COAG.

A number of approaches and combination of approaches are possible to achieve this:

- mutual recognition of registration for a fundraising organisation or activity
- harmonisation of state and territory legislation
- national legislation.

#### *Mutual recognition*

The Tasmanian Government (sub. 170) suggested mutual recognition as a possible solution to the costs faced by charities operating in multiple jurisdictions. Elsewhere, the Victorian State Services Authority (in its report on NFP regulation) noted that this option offered a means to address the major concerns of fundraisers. It observed that fundraisers wishing to conduct a national campaign find the greatest difficulties relate to the requirement to register separately in every jurisdiction, and this could be addressed if states and territories agreed to reciprocally recognise a fundraiser's interstate registration. This would mean that any NFP conducting fundraising across state boundaries would only need to be registered with and report to one regulator to cover all fundraising activities (SSA 2007).

Mutual recognition is rarely acceptable to governments unless the differences between jurisdictions are trivial. Otherwise, it could be expected to result in at least some 'forum shopping', whereby fundraisers would register in that jurisdiction with

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the least onerous requirements for those regulations affecting them. To the extent this occurred, this would exacerbate individual governments' concerns that its policy intent was being subverted and it was abdicating responsibility for fundraising within its jurisdiction. For these reasons, mutual recognition without significant harmonisation is not likely to be acceptable.

### *Harmonisation*

Many participants, including Ronald McDonald House in the Hunter, were attracted to harmonisation of state and territory legislation, recommending that 'Fundraising Acts should be consistent throughout each state to ensure effective [national] campaigning' (sub. 38, p. 7).

Combined with mutual recognition and a national registration option, harmonisation of legislation is a practical way to address the regulatory burden on NFPs operating in more than one jurisdiction. Indeed the case for harmonisation is compelling. Review of fundraising legislation required for harmonisation would also provide an opportunity for jurisdictions to address outdated and inappropriate legislation including covering new ways of fundraising offered by technology, many of which inherently cross jurisdictional boundaries. As PilchConnect noted:

... policy makers should ensure that any harmonisation of fundraising laws takes into account the emergence of new technologies and sound policy principles are developed that will be 'technologically neutral' and able to address future fundraising techniques. (sub. 131, p. 15)

In view of the concerns raised by participants, harmonised legislation should:

- contain a complete definition of fundraising activities
- apply to all organisations undertaking fundraising activities
- require reporting commensurate with the size of the NFP or the amount being raised
- encompass contemporary fundraising activities such as internet fundraising or interactive television.

### *National legislation*

Most participants in this study favoured the introduction of national fundraising legislation and a national regulator. Mission Australia (sub. 56), for example, recommended the various state fundraising requirements be aggregated to a single consistent framework. Similarly, Scouts Australia (sub. 53), BoysTown (sub. 77) and ACFID (sub. 136) argued for a single regime across Australia, achieved by the

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Australian Government having legislative and administrative responsibility for the regulation of fundraising under a national fundraising act. The Smith Family (sub. DR204) indicated that a national approach would reduce the current burden of legislation which sees many NFPs reporting annually to every state and territory government.

Many participants (such as Berry Street, sub. 51; Royal Flying Doctor Service of Australia, sub. 84; National Breast Cancer Foundation, sub. 98; PilchConnect, sub. 131; VCOSS sub. 164) supported the recommendation of the recent report of the recent Senate Committee inquiry into disclosure regimes which called for a national fundraising act to be developed following a referral of powers from the states and territories to the Commonwealth.

A variation on this approach was suggested by Flack:

State and Territories refer to the Commonwealth their powers to regulate and license charitable and community organisations wishing to conduct public fundraising and then introduce soft touch regulation in conjunction with National Codes of Practice supervised by sub-sector industry bodies. (sub. 29, p. 6)

As with harmonisation, developing a national fundraising act would also provide the opportunity to address shortcomings of the current state and territory legislation.

However, Flack considered national legislation offered the only realistic path to fully address deficiencies in state and territory based fundraising regulation:

‘Harmonisation’ of existing state-based fundraising regulation (regulation designed for the regulation of street collections) will not in itself address the issues associated with the ubiquitous use by NFPs of the internet and the growing use by NFPs of other telecommunications technologies including email and SMS. This is because, with the possible exception of the NSW regulation ... the existing state-based regulation does not directly address the use of modern telecommunications technologies for fundraising. (sub. DR186, p. 9)

Moreover, he questioned whether state and territory governments have the legal jurisdiction to regulate fundraising via the internet or the activities of third party agents outside their state or territory boundaries who provide NFPs with fundraising services (sub. DR186). Such concerns strengthen the argument for Commonwealth level legislation, as ‘only the Commonwealth is in a position to regulate fundraising practices that use the mail, the internet, or other digital communications’ (sub. DR186, p. 10).

The Commission is attracted to a national fundraising act, although it is reluctant to recommend this as an immediate change. State and territory governments would be understandably hesitant to cede this power to the Commonwealth without knowing

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what form such national legislation might take. This reluctance would be lessened if these governments had already agreed to a harmonised set of legislation that would form the basis of a nationally applicable model act. A model act (with limited exceptions) could provide national consistency and yet still allow states and territories to control local, jurisdiction-specific small fundraising activities (such as those referred to by the Australian Catholic Bishops Conference, sub. DR201).

The Commission therefore suggests that governments proceed to a nationally consistent approach to fundraising in a staged manner:

- First, the states and territories develop harmonised fundraising legislation through the adoption of a model act.
- Second, the states and territories mutually recognise (in conjunction with the Australian Government) the fundraising approval granted in other jurisdictions. The proposed national Registrar for Community and Charitable Purpose Organisations (recommendation 6.5) should support mutual recognition by providing a national register of cross-jurisdictional fundraising organisations and/or activities, a single reporting point, and a database of the financial and disclosure information required by the harmonised legislation.

Finally, the states and territories could refer their powers to the Commonwealth to enact national fundraising legislation, based on the harmonised legislation agreed by the state and territory governments and regulated by the proposed Registrar.

Regardless of whether this proceeds, there may be a need for the Commonwealth to enact legislation for the establishment of the national register and to cover mail, electronic and telephonic fundraising.

Some states have already moved to address concerns in the relation to fundraising legislation being outdated, inefficient and inappropriate. Victorian Government, for example, completed a review of NFP regulation in 2007, which among other things, addressed its fundraising legislation and made recommendations to improve its *Fundraising Appeals Act 1998*. Those recommendations included clarifying the definition of fundraising, extending the fundraising registration period and simplifying registration requirements associated with some reporting functions. These reforms were implemented by the *Fundraising Appeals Amendment Act 1998* in February 2009 (Victorian Government, sub. DR305)

These options for a more nationally consistent approach to fundraising (mutual recognition, harmonisation and national legislation) are also being investigated by COAG.

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The Commission expects that any move to harmonise state and territory fundraising legislation would result in a body of updated and streamlined regulation that would address such concerns. Failure to achieve this outcome within a timely manner would continue to burden NFPs unnecessarily.

## **Reporting requirements for fundraising activities**

The variability and inconsistency in the way charities communicate key information to donors was highlighted by the Australian Consumers' Association as a major concern for donors (SSCE 2008). If unaddressed, this concern could potentially erode public confidence and trust in fundraising and hence the public's willingness to participate in or donate to fundraising activities.

This concern is not new. The Industry Commission's 1995 report on *Charitable Organisations in Australia* noted:

The community and supporters of [charitable organisations] would benefit from being able to compare the fundraising activities of [charitable organisations] over time and between organisations. (IC 1995, p. XXVII)

That report recommended the development of nonprofit accounting standards and measures for greater levels of disclosure and transparency to facilitate the availability of better, more comparable information for donors (IC 1995).

The reforms to facilitate standardised financial reporting noted in section 6.4 should now allow more consistent record-keeping and public reporting of details regarding fundraising organisations and/or activities within jurisdictions. In addition, the move to more nationally consistent fundraising legislation should also lead to more consistent reporting requirements across jurisdictions. Together with effective self-regulation among fundraisers (section 6.7), these developments should deliver comparability across the sector and among jurisdictions that has been lacking in the past.

### RECOMMENDATION 6.3

***To promote confidence in and reduce the compliance costs associated with fundraising regulation, Australian governments, through the Council of Australian Governments Business Regulation and Competition Working Group, should:***

- ***agree to and implement mutual recognition and harmonised fundraising regulation across Australia, through the establishment of model fundraising legislation***

- 
- *support the development of a fundraising register for cross-jurisdictional fundraising organisations and/or activities, to be administered by the proposed national Registrar for Community and Charitable Purpose Organisations*
  - *clarify the responsibility for regulation of fundraising undertaken through electronic media such as the internet, and move to ensure appropriate regulation of such mediums including through Commonwealth legislation.*

## **6.6 Responsibility for determining concessional tax status**

At the Commonwealth level, a number of agencies are involved in determining concessional tax status for NFPs. ATO endorsement for concessional tax treatment is required for charitable institutions and funds (including public benevolent institution (PBI) status), income tax exempt funds and most deductible gift recipients (DGRs).

As explored in chapter 7, there are a number of ways an NFP may gain deductible gift recipient status. These include listing on various portfolio registers, such as the Register for Environmental Organisations (requiring approval of the relevant Minister and direction from the Treasurer), or through the gazetting of an organisation, or the specific inclusion in legislation initiated by the Treasurer.

Many participants considered this confusing situation in need of reform, with the National Roundtable of Nonprofit Organisations suggesting among other things ‘One body to determine and regulate charitable status’ (sub. 105, p. 12).

More fundamentally, participants such as VCOSS (sub. 164) and PilchConnect (sub. 131) considered that it was not appropriate for this endorsement role to reside with the ATO. On this issue, the Australian Women’s Health Network noted:

It is also very important to separate the Australian Taxation Office role of registering and endorsing eligible NFPs for taxation concession status from its revenue protection and collection role. (sub. DR295, p. 5)

The Australian Council for International Development was more emphatic:

No better service to Australians could be provided than for the ATO to be relieved of its conflict between deciding matters of eligibility for tax deductibility and having to administer the collection of and compliance with taxation law. The ATO was, for the want of any other body being responsible, burdened with making policy rather than enforcement of compliance. (sub. DR299, p. 4)

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The Commission considers that, at a minimum, endorsement for Commonwealth tax concessions for NFPs that are currently undertaken by the ATO should be undertaken by the proposed Registrar for Community and Charitable Purpose Organisations. This initial endorsement would be based on the same information as currently required by the ATO.

The Commission envisages that the Parliament will continue to have a limited role in determining DGR status for some organisations (chapter 7). As a consequence, DGRs that are not currently endorsed by the ATO (such as those approved by Parliament) should still need to be registered with the Registrar and be subject to the same conditions as other endorsed bodies. Existing departmental registers would be consolidated into the national register administered by the proposed Registrar.

A condition for continuing endorsement would be for an NFP to provide a publicly accessible annual community-purpose statement on how it met its objectives.

The Registrar would have the authority to dis-endorse an organisation for a particular concessionary tax status where it failed to meet the eligibility requirement. The ATO would have a right to request a review of any endorsement and the authority to direct the Registrar to remove tax concession status where it finds evidence of tax fraud or non-compliance.

In the interests of equity and reducing compliance costs, it would be sensible for the states and territories to use these endorsements in the determination of eligibility for their range of concessions. However, given the eligibility criteria are poorly aligned across jurisdictions, such recognition is not straight forward. This is discussed further in chapter 7.

#### RECOMMENDATION 6.4

***Responsibility for endorsement for Commonwealth tax concessional status for not-for-profit organisations and maintaining a register of endorsed organisations should sit with the Registrar for Community and Charitable Purpose Organisations. To retain endorsement for Commonwealth tax concessions, endorsed organisations should be required to submit an annual community-purpose statement to the Registrar which would be accessible to the public.***

***The Australian Commissioner for Taxation should have the right to seek a review of decisions of the Registrar in relation to the endorsement of not-for-profit organisations for tax concessional status. The Commissioner should also have the power to issue a directive to the Registrar for the dis-endorsement of an organisation where there has been a breach of taxation compliance requirements.***

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## 6.7 Self-regulation

As in the for-profit sector, self-regulation rather than government regulation can often be a more flexible and less burdensome way to deliver quality assurance to stakeholders. Appropriately designed self-regulation can promote confidence in the sector and improve relations between donors and NFPs. In its submission, the Fundraising Institute Australia (FIA) noted:

At present, self-regulation under industry codes allows not for profit organisations to demonstrate to funders, stakeholders and the public that they are upholding the highest standard of practice. FIA's Principles and Standards of Fundraising Practice and the Australian Council for International Development's (ACFID) Code of Conduct are standouts in the sector, encouraging transparent, ethical and accountable conduct for fundraisers, charities and nonprofits operating in Australia and overseas. (sub. 76, p. 8)

While experience of self-regulation in the sector is relatively limited (box 6.6), the National Roundtable of Nonprofit Organisations commented on the need to consider different approaches to regulation, including self-regulation:

The Roundtable argues ... not always for less regulation, but rather, for better regulation .... The utility and effectiveness of self regulation and the roles of Boards and Management Committees also require important consideration. (sub. 105, p. 11)

Self regulation has a vital and valuable role in reducing the burden of regulation, and making it more tailored to relevant parts of the NFP sector. There is value in considering its appropriateness, on a case-by-case basis, to address issues where government regulation is an option.

As for all regulation, considerations for self-regulation include the costs of enforcement, and also the possibility of overlapping regulatory requirements, particularly for larger NFPs with multiple engagement with government and the community. Where self-regulation has been implemented, it remains necessary to monitor its efficacy and enforcement.

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## Box 6.6 Examples of sector experience of self-regulation

### *Australian Council for International Development (ACFID) — Code of Conduct*

Initially adopted by the sector in 1996, this voluntary Code commits signatories to conduct their activities with integrity and accountability. It has the following features:

- support mechanisms for the Code include an active and high profile Code of Conduct Committee
- the Committee monitors adherence to the Code using annual reports of signatories, and investigates inquiries and complaints
- signatories are also guided by the ACFID NGO Effectiveness Framework
- while the Code is voluntary, Code signatory status is an AusAID accreditation as well as an ACFID membership requirement (AusAID 2009).

The Code is currently being reviewed (ACFID 2009).

### *Fundraising Institute Australia (FIA) — Principles and Standards of Fundraising Practice*

FIA's Principles and Standards of Fundraising Practice were developed over the period 2005 to 2008, with intense government and public consultation in order to:

- support the rights of donors who make gifts
- establish a code of conduct for fundraisers
- guide fundraisers in ethical and professional practice.

FIA's codes are mandatory for FIA members:

- Compliance is monitored by the Ethics Committee in accordance with a formal and open complaints process
- Complaints from donors or members of the public, as well as others in the industry, are open to review and action by the Ethics Committee (FIA, sub. 76).

## 6.8 A way forward

There are clearly many problems with the present regulatory regime for NFPs which is disjointed with relatively high compliance costs, especially for smaller incorporated NFPs and those operating across jurisdictions. The small number of staff in some state/territory regulators devoted to NFP regulation also raises questions about the effectiveness of the enforcement of that regulation.

Given the diverse capacity of the sector, it is unlikely that sudden, revolutionary change would be desirable. A more measured and gradual approach should improve certainty and reduce the cost of adjustment. It would also allow time to put in place

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important building blocks, such as the community-purpose statements and AASB reporting standards, in an appropriate sequence (chapter 14).

To this end, the Commission’s approach is multi-stranded and seeks to:

- provide better and more streamlined advice to the sector — to improve its management, accountability to stakeholders and choice of the best legal form
- provide a more accessible national legal form — via a separate chapter within the Corporations Act for NFP companies limited by guarantee
- reduce the cost and complexity of migrating across regulatory and legal forms, so as to encourage NFPs to choose a structure that best suits them in a constantly changing environment and as the scale and scope of their activities change
- ensure proportionality in the regulation of the sector so that smaller NFPs are not subject to the same reporting and regulatory requirements as larger NFPs
- provide clear standards for financial reporting that can accommodate NFPs’ circumstances
- provide a more streamlined, efficient and consistent set of fundraising legislation in all jurisdictions
- provide more transparency for the endorsement of taxation concession status accorded NFPs and greater consistency in eligibility across jurisdictions
- provide a central portal for community-purpose, governance and financial information and reduce the reporting burden NFPs face to provide that information.

Under this approach, the states and territories would continue to incorporate associations under their relevant legislation, but would pursue harmonisation of their respective legislation, with a priority on reporting requirements, rules on the distribution of assets on the dissolution or restructuring of an NFP entity, and fundraising. The Commonwealth would offer an improved alternative path for incorporation under the Corporations Act.

## **The Registrar for Community and Charitable Purpose Organisations**

To make this work, the Commission proposes a new Commonwealth organisation — the Registrar for Community and Charitable Purpose Organisations. This Registrar would be a ‘one-stop-shop’ for NFPs for the consolidation of Commonwealth regulatory arrangements and the regulatory responsibilities associated with Commonwealth-level legal forms for NFPs. This would offer NFPs the advantage of a one-stop-shop for registration and tax endorsements, the

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submission of corporate and financial information, and registration for national and/or cross-jurisdictional fundraising activities.

The Registrar could be a separate agency under the *Financial Management and Accountability Act 1997*, or it could be a statutory body or organ within ASIC.

Participants were divided on which was the better option. A separate agency was favoured by participants such as Senator Murray (sub. DR187), Social Traders (sub. DR189), the Australian Catholic Bishops Conference (sub. DR201), the Anglican Diocese of Sydney (DR206), Changemakers Australia (sub. DR249), Centre for Social Impact (sub. DR285) and Australian Red Cross (sub. DR296). The primary reason for this view was the concern that ASIC's emphasis on for-profit business regulation would ill suit it to provide regulatory oversight of NFPs. It would also restrict the potential for the Registrar to expand into a more development focused role.

ASIC can readily accommodate separately focussed entities within its structure — for example, the Corporations and Markets Advisory Committee is a separate body corporate within ASIC with direct accountabilities to Government — so this issue is more one of culture, which will need to be addressed.

Having the Registrar within ASIC was favoured by Bunnerong Gymnastics Association Inc. (sub. DR188), BoysTown (sub. DR251), CPA Australia (sub. DR224), Moore Stephens (sub. DR248), the ACT Government (sub. DR273) and the Australian Women's Health Network (sub. DR295). They noted a separate body would involve greater costs and would likely take longer to get into operation.<sup>6</sup> Additionally, Moore Stephens argued that having the Registrar within ASIC made sense because:

- (a) ASIC currently registers and regulates a number of not-for-profit entities
- (b) ASIC currently deals with the fundraising aspects of for-profit entities
- (c) Is currently the national portal for the collection of corporate and financial public record information for entities under the Corporations Act
- (d) Deals with the adoption of accounting and auditing standards and is the regulator for Company Auditors who predominantly undertake the audits of not-for-profit organisations
- (e) Has an infrastructure which is suited to this type of Registrar role. (sub. DR248, pp. 2–3)

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<sup>6</sup> With regard to the latter, the NZ Charities Commission was established by the Charities Act in 2005, and its register opened two years later in February 2007 (NZ Charities Commission 2009).

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Establishing the Registrar initially within ASIC as a separate entity (rather than as a new, stand-alone organisation) appears to be the more appropriate option in view of the:

- reporting amendments noted above that will make the company limited by guarantee form more attractive for NFPs operating in multiple jurisdictions and that this form is already administered by ASIC under the Corporations Act
- many synergies associated with locating the Registrar within ASIC (such as those arising from ASIC's IT system, corporate governance education support, and national presence via offices and call centres)
- precedence of ASIC successfully establishing separate bodies within its organisation (such as the Corporations and Markets Advisory Committee and the Superannuation Complaints Tribunal) which reduces the risks attached to setting up a new entity and bodes well for a similar experience with the Registrar.

While the Commission expects the Registrar would have a regulatory focus appropriate for NFPs as an independent entity within ASIC, it would be prudent to review its operation in five years in regard to whether it should remain within ASIC or would be better served as a stand-alone body with ASIC 'back office' support. Subject to the precise nature of the legal structure adopted (as a separate body corporate or a statutory organ within ASIC), a dedicated Commissioner would need to be appointed to oversee this body. In addition, an advisory panel, drawn from the sector, should be established to provide input on sector specific issues and support culture change within ASIC as required.

In its draft report, the Commission canvassed the merits in transferring ORIC to the proposed national Registrar. This would consolidate all Commonwealth NFP regulator activity under one agency.

ORIC opposed being transferred to the National Registrar on the grounds of:

- the unique and special functions of ORIC
- the greater benefit of retaining ORIC in the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) portfolio
- the possible reduced corporate governance support services to Aboriginal and Torres Strait Islander corporations.

The Victorian Government also argued there is a need to continue to provide Indigenous organisations with a level of autonomy. Accordingly, it considered that if ORIC is incorporated into the Registrar, it should be as a discrete unit (sub. DR305).

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The Commission's proposal is to transfer ORIC as a separate branch or office within the Registrar which would allow it to retain its special functions, including governance support. Additionally, locating the Registrar within ASIC would allow ORIC's functions to benefit from synergies with ASIC's expertise in governance and financial education support.

One of the advantages of ORIC's current location within FaHCSIA is a commitment to interagency liaison and cooperation. This should not be adversely affected by a transfer of ORIC to the proposed national Registrar. Accordingly, the Commission is not convinced that ORIC needs to remain under the FaHCSIA portfolio to most effectively discharge its responsibilities. Overall, the ability of ORIC to discharge its special functions would be enhanced by transferring it to the Registrar and being located within ASIC.

Nevertheless, the Commission recognises that it is important for ORIC to maintain a separate identity within the new organisation because of its specialist skills, the knowledge of its staff, and the nature of its functions. This change envisages the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* would remain in force, although it would require amendments to allow ORIC and its responsibilities to be incorporated with the functions of the proposed national Registrar. Over time, it is expected that the work of this specialist branch of the Registrar may become more mainstream if the governance arrangements for Indigenous organisations warrant such a shift.

Participants raised concerns about the likely cost of the proposed Registrar, including concerns that it must be adequately funded to discharge its responsibilities (Museums & Galleries NSW, sub. DR292, CPA Australia, sub. DR224). Similar concerns were expressed to the Senate inquiry's consideration of a national regulator (SSCE 2008).

Viewed against ASIC's total budget for 2009-10 of around \$556 million (Swan 2009), the likely additional cost of the Registrar to the Commonwealth budget is modest. Moreover, there may be savings in the consolidation of the tax endorsement and regulation under one agency. The greatest potential for savings, however, comes from a well functioning registrar and wider agency use of financial and corporate information in undertaking organisational 'health checks'.

There may be additional costs imposed on some NFPs under the proposed arrangements, where they will face greater reporting requirements and public scrutiny. This is warranted to maintain public trust in the sector. While there has been no major scandal in Australia involving NFPs, it has happened in other countries, and the risk of it happening in Australia is higher without an effective regulatory regime. This point was acknowledged in submissions:

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The Roundtable argues ... not always for less regulation, but rather, better regulation and concedes that this might mean more regulation in some contexts for some organisations. ... The sector needs regulation which is proportionate to risks of non-compliance and which promotes and sustains the reputation of the sector and the high level of public trust which it must continue to enjoy. (NRNO, sub. 105, p. 11)

The national approach does not suggest that regulation and enforcement at the state/territory level should be weakened. The states and territories already play a strong role in fostering local community-based NFP endeavour and the Commission acknowledges this should continue to be the case. But it does anticipate an enhanced role for the Commonwealth and, over time, a greater use of Commonwealth incorporation by NFPs.

#### RECOMMENDATION 6.5

***The Australian Government should establish a one-stop-shop for Commonwealth regulation by consolidating various regulatory functions into a new national Registrar for Community and Charitable Purpose Organisations. While ultimately the Registrar could be an independent statutory body, initially it should be established as a statutory body corporate or organ in the Australian Securities and Investment Commission.***

***The Registrar will undertake the following key functions:***

- ***register and regulate not-for-profit companies limited by guarantee and Indigenous corporations, with a stakeholder team dedicated to Indigenous corporations***
- ***assess the eligibility of not-for-profit organisations for Commonwealth tax concession status endorsement and maintain a register of endorsed organisations***
- ***register cross-jurisdictional fundraising organisations and/or activities by not-for-profit organisations***
- ***provide a single reporting portal for public record corporate and financial information.***
- ***provide appropriate guidance in relation to governance matters***
- ***investigate compliance with regulatory requirements***
- ***provide complaints handling in respect of the above functions.***

*The Registrar should implement the principle of ‘report once, use often’ by providing a single reporting portal and form for annual reporting on community-purpose, governance arrangements, financial accounts and fundraising activity. Australian governments, through the Council of Australian Governments, can support this principle and substantially reduce compliance costs for not-for-profit organisations by:*

- adopting and developing an implementation strategy for the Standard Chart of Accounts for reporting by not-for-profits in receipt of government grants or service contracts*
- expanding the Standard Business Reporting initiative to include reporting requirements by not-for-profits*
- encouraging their agencies to utilise the governance and financial account information (that will be lodged with the Registrar) to meet their organisation level ‘health check’ requirements for contracting purposes.*