

ACT Auditor-General's Report

Performance Audit Report

<h3>Regulation of Charitable Collections and Incorporated Associations</h3>
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Department of Urban Services

The Registrar-General's Office
(Department of Justice and Community Safety)

March 2006



AUDITOR-GENERAL
Australian Capital Territory



PA05/18

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled 'Regulation of Charitable Collections and Incorporated Associations', conducted under the authority contained in the *Auditor-General Act 1996*.

I would appreciate if you could arrange for the tabling of the Report in the Legislative Assembly pursuant to Section 17(4) of the *Auditor-General Act 1996*.

Yours sincerely

Tu Pham
Auditor-General
27 March 2006

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1. REPORT SUMMARY

INTRODUCTION

1.1 This report presents the results of a performance audit that reviewed the regulation of charitable collections and incorporated associations in the Australian Capital Territory (ACT).

BACKGROUND

1.2 There are many voluntary and charitable organisations that contribute to the social fabric of the Canberra community. They facilitate and promote sporting, artistic, social, charitable, professional and other pursuits. Many Canberrans are members of at least one such organisation. There are over 2400 incorporated associations and 150 licenced charities in the ACT.

1.3 Effective government regulation of their activities contributes to community confidence in the management of these organisations, and, in turn, encourages organisations to operate properly and in compliance with the law.

Charitable Collections

1.4 Community and non-profit organisations play an important role in providing services to the ACT community. Funding for the provision of these services is often obtained through fundraising and charitable collections from the community.

1.5 Charitable collections are currently regulated under the *Charitable Collections Act 2003* (the Collections Act) and the *Charitable Collections Regulation 2003* (the Regulation). The objects of the Collections Act are:

- (a) to promote proper management and administration of collections;
- (b) to ensure proper record-keeping and auditing of accounts for collections; and
- (c) to ensure that the public has access to information about collections.

1.6 At present the Department of Urban Services (DUS) is responsible for the administration of this Act and issuing and monitoring the collection licences in the ACT. As at 8 February 2006, there were 113 active collection licences in the ACT.

Incorporated Associations

1.7 A significant number of social, community, special interest and sporting groups are incorporated under the *Associations Incorporation Act 1991* (the Associations Act). Incorporation under the Act is a simple and inexpensive way of

establishing a legal entity that has the ability to function in its own right and protects its members from the debts and liabilities of the association.

1.8 These associations operate businesses ranging in size from those with minimal assets and membership numbers to those with over 100 000 members and \$16 million in assets.

1.9 Incorporated associations are regulated under the Associations Act. At present the Registrar-General's Office (RGO) is responsible for the administration of this Act. As at 30 June 2005, there were 2431 incorporated associations in the ACT.

AUDIT OBJECTIVE

1.10 The objective of this audit was to provide an independent opinion to the Legislative Assembly on whether:

- charitable collections and incorporated associations are currently being adequately monitored and controlled; and
- administration of the functions is consistent with the relevant Acts.

1.11 Further information on the audit scope and criteria is at Appendix B. Briefly, this audit involved assessing:

- regulatory operations including incorporation and wind-up of associations;
- licensing for charities;
- monitoring of associations and charities; and
- complaint and investigation procedures undertaken by the administering agencies.

AUDIT OPINION

1.12 The audit opinions drawn against the audit objective are set out below.

Charitable Collections

Overall, there is a serious deficiency in the regulation of charitable collections. In particular, the Department of Urban Services does not adequately monitor, review and control charitable collections to meet the requirements of the Charitable Collections Act.

Incorporated Associations

The Registrar-General's Office adequately monitors incorporated associations and the administration of incorporated associations is sufficient to meet the legislative requirements.

Audit noted that given the limited regulation provided under the *Associations Incorporation Act 1991*, there is a risk to effective governance when members do not involve themselves in controlling their Associations. This risk is more significant for larger associations with significant revenue, assets and liabilities.

KEY FINDINGS

1.13 The audit opinion is supported by the following findings:

Charitable Collections

- The charitable collection licensing process does not provide confidence that a collection will meet the requirements of the Collections Act. There were no formal procedures or guidelines used to decide whether a charitable collection meets the legislative requirement.
- A significant number of charitable collections may be underway in the ACT without complying with the Collections Act.
- Licence applications are assessed and approved in a timely manner.
- The administering Department (DUS) monitors whether paid collectors in the ACT are routinely displaying their paid status on identity badges as required under the Collections Act only for those collectors operating in open space.
- No monitoring is currently undertaken of whether all collection moneys are deposited into bank accounts used solely for money received from the collections.
- Most licensees reviewed by the audit did not comply with the regulation to submit annual accounts to the Chief Executive of DUS.
- Monitoring by DUS of charitable collections (licenced or otherwise) does not provide the community with confidence that money donated is properly accounted for. There is no legislative requirement for regulation of annual collections under \$15 000, increasing the risk of improper collection and inadequate accounting of money collected.
- Neither the current licence database nor the publicly available information on collections licences is accurate and up to date.
- Information about the collections function is not readily accessible by either stakeholders or the general public.
- It may be more appropriate for the function to be transferred from DUS to the Department of Justice and Community Safety, which has similar regulatory functions for consumer protection.

Incorporated Associations

- The incorporation process is reasonably efficient and timely.
- Monitoring of incorporated associations is currently sufficient to meet the requirements of the Associations Act.

- The RGO currently has no formal procedures in place for handling complaints about incorporated associations.
- The Associations Act anticipates that Associations will be self-regulating. There is a risk to effective governance when members do not involve themselves in controlling their Associations. This risk is more significant for larger associations with significant revenue, assets and liabilities.

RECOMMENDATIONS AND RESPONSE TO THE REPORT

1.14 The audit made eight recommendations to address the audit findings.

1.15 In accordance with section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Chief Executive of the Department of Urban Services and the Registrar-General for consideration and comments. The Chief Executive's and the Registrar-General's overall responses are shown below:

Overall Response by the Chief Executive, Department of Urban Services

The Department of Urban Services generally agrees with the findings of the proposed audit report.

Overall Response by the Registrar-General

I consider that the proposed report addresses the administration and regulation of incorporated associations in a fair and reasonable manner. In particular, I am pleased that the report indicates that a good understanding was gained during the audit of the nature of incorporated associations, the philosophy underpinning the Associations Incorporation Act 1991 (the Act), and the somewhat minimal regulatory regime the latter imposes.

1.16 In addition, the Chief Executive and the Registrar-General provided responses to each recommendation, as shown below.

Recommendation 1

The Department of Urban Services should expedite negotiations with the Department of Justice and Community Safety (JACS) on the transfer of the charitable collections function, as JACS is a more appropriate Department to administer this function.

DUS Response: Agreed.

Recommendation 2

The Department of Urban Services should conduct a risk analysis of charitable collections activity in the ACT and institute an effective monitoring and reviewing regime in response to the risks identified.

DUS Response: Agreed.

The analysis of risk should distinguish between the regulating agency's obligations and the licensee's obligations under legislation.

Recommendation 3

The Department of Urban Services should prepare formal guidelines detailing the process used to decide whether a charitable collection meets the requirements of the Act prior to issuing the licence.

DUS Response: Agreed.

The administrative guidelines should clearly state what exemptions apply when assessing a licence application; differentiate precisely between the Territory's and the Commonwealth's roles in regulating collecting activity; state grounds on which licence applications may be refused and which requirements of the Act apply to unlicensed collectors.

Recommendation 4

The Department of Urban Services should review the current threshold for collections requiring a licence, and consider options that include extending the need for licensing (if not reporting) to include charitable collections under \$15 000.

DUS Response: Agreed.

Recommendation 5

The Department of Urban Services should ensure the current database of collections licences is accurate and ensure that the public record is consistent with the database.

DUS Response: Agreed.

Recommendation 6

The Registrar-General's Office should ensure there is a documented process on complaints about the operation of Incorporated Associations to ensure that any valid concerns raised are reviewed and action taken.

RGO Response: Agreed

The Registrar-General's Office will initiate and maintain a central file or register of administrative actions in response to complaints about associations.

Recommendation 7

The Registrar-General's Office should consider conducting random checking of annual returns to ensure associations have their annual accounts audited as required by the Act.

RGO Response: Agreed.

While all annual returns are checked when they are submitted to the Registrar-General's Office to make sure they have been audited, the bona fides, or credentials of the auditor, where applicable, are not. The Registrar-General's Office is prepared to institute random checks as recommended to monitor compliance with the auditor qualification requirement.

Recommendation 8

The Registrar-General's Office should consider following up with larger associations if they do not comply with the requirement to submit annual returns in the intervening three years prior to cancellation.

RGO Response: Agreed in part.

As required by the Act, the Registrar-General's Office sends a reminder letter to the public officer of each association at the end of each association's adopted financial year informing him/her of the date by which the annual return must be lodged. Failure to lodge an annual return by the due date is an offence under the Act attracting two penalty units. It is the case that the Registrar-General's Office does not take any further action to monitor compliance with this requirement, until the failure to lodge annual returns occurs over three consecutive years, in which cases the processes are begun to cancel the association's incorporation under Section 93 of the Act.

2. CHARITABLE COLLECTIONS

INTRODUCTION

2.1 This Chapter assesses various stages of the application and approval process and regulatory activities associated with obtaining and maintaining a charitable collection licence.

KEY FINDINGS

- The charitable collection licensing process does not provide confidence that a collection will meet the requirements of the Collections Act. There were no formal procedures or guidelines used to decide whether a charitable collection meets the legislative requirement.
- A significant number of charitable collections may be underway in the ACT without complying with the Collections Act.
- Licence applications are assessed and approved in a timely manner.
- The administering Department (DUS) monitors whether paid collectors in the ACT are routinely displaying their paid status on identity badges as required under the Collections Act only for those collectors operating in open space.
- No monitoring is currently undertaken of whether all collection moneys are deposited into bank accounts used solely for money received from the collections.
- Most licensees reviewed by the audit did not comply with the regulation to submit annual accounts to the Chief Executive of DUS.
- Monitoring by DUS of charitable collections (licenced or otherwise) does not provide the community with confidence that money donated is properly accounted for. There is no legislative requirement for regulation of annual collections under \$15 000, increasing the risk of improper collection and inadequate accounting of money collected.
- Neither the current licence database nor the publicly available information on collections licences is accurate and up to date.
- Information about the collections function is not readily accessible by either stakeholders or the general public.
- It may be more appropriate for this function to be transferred from DUS to the Department of Justice and Community Safety (JACS), which has similar regulatory functions for consumer protection.

BACKGROUND

2.2 In the ACT, the *Charitable Collections Act 2003* regulates all types of collections made for charitable purposes. Collections can include money or goods

donated or sold. Collections can be made by door to door, in public places, using collection bins, by phone and Internet and by appeals by writing.

2.3 Some money-collecting activities are defined not to be collections. Accordingly, there is no requirement for DUS to monitor these activities. These exempt activities include:

- charitable collections where the expected collection is less than \$15 000 in one calendar year;
- approved or exempt lotteries;
- soliciting or receiving bequests;
- organisations such as churches raising funds on their premises;
- schools – voluntary contributions or other activities that raise funds from students, parents, friends, Parents and Citizens’ Associations and Alumni for educational activities and the school;
- soliciting from government, or seeking sponsorships from corporations;
- soliciting by a non-government organisation that is accredited with the Australian Agency for International Development (AUSAID)
- soliciting membership fees for clubs and associations; and
- workmates, clubs or meetings raising funds from the people on the premises for the benefit of each other (for example raffles or ‘passing the hat’ for a card and present.) However, collecting for external parties would require a licence if the expected collection would exceed \$15 000.

2.4 Administration of the charitable collections is currently the responsibility of Urban Parks and Places group in DUS. The placement of responsibility appears historical, based on a presumption years ago that most collections took place in public places. Discussions have been carried out with the Department of Justice and Community Safety (JACS) about the transfer of the function to JACS.

2.5 There is very limited information on the value of charitable collections. DUS does not tabulate the returns from those charities that hold licences in order to form an ACT total of approved charitable collections.

LICENCING

Best Practice Guidelines

2.6 In November 2003, DUS contracted Minter Ellison Consultants to produce a set of best practice guidelines to provide guidance to licensees on their responsibilities under the Collections Act. There were, however, no guidelines for the Department to process and approve licences.

- 2.7 The guidelines for licensees cover a number of requirements including:
- clear identification of collectors;
 - clear identification of the purpose of collections;
 - collectors should be able to advise on the use of the funds collected; and
 - arrangements for accountability of the funds collected, including receipting, banking, record keeping and reporting to the Department.

2.8 However, Audit noted that a significant number of the requirements listed under these best practice guidelines were not being actively monitored or enforced by the Department.

2.9 In addition, these guidelines do not apply if the charitable collection is under \$15 000. This threshold appears high and may increase the risk of improper collection and inadequate accounting of money collected. DUS should consider whether the policy intent of protecting public donations would be better achieved if these requirements, possibly omitting that of reporting to the Department, should apply for all charitable collections except exempt collections, such as those listed in paragraph 2.3.

2.10 Issuing licences for collections under the \$15 000 threshold would allow for greater Departmental monitoring. This would reduce the risk of improper collections by organisations and individuals currently under this threshold.

Applications for collections licence

2.11 The Collections Act requires any person collecting for any charitable purpose, where the expected collection will exceed \$15 000 in a calendar year, to be licenced. However, organisations such as schools and those organisations accredited with AUSAID are exempt from this requirement. Appendix A lists the 113 organisations holding licences as at 8 February 2006.

2.12 To obtain a licence for charitable collections in the ACT, licensees must be able to demonstrate that the purpose of their collection complies with the Collections Act. Audit found no formal documentation in the Department detailing the process used to decide whether a charitable collection meets the requirements of the Act. On discussion with the agency regarding the definition of a charitable collection, Audit was informed that no documentation existed as it was considered unnecessary to formally document. Audit believes there needs to be a more robust licence application review process.

2.13 Audit observed that applicants were being encouraged to apply for a five-year licence even if they did not intend to collect for that period of time. Having licences that are valid beyond their intended use may increase risks of misuse, especially where there is a serious lack of any monitoring or review process.

2.14 Audit selected a sample of 15 licence applications to review. Applications include information such as details of the applicant, purpose and period of collection, whether commercial fundraisers will be employed and whether the applicant has recorded a previous conviction for fraud.

2.15 Audit was unable to ascertain what percentage of the licences met the Department's charitable collection requirements as no formal internal guidelines existed detailing the definition of a charitable collection purpose.

2.16 The Australian Tax Office (ATO) provides extensive information relating to the definition of a charitable collection purpose and charitable organisations. It also endorses charities whose collections are eligible tax deductions. Several agencies in the ACT also grant exemptions, such as for rates and vehicle registration fees to charitable organisations. Audit considers that DUS should invite applicants for charitable collections licences to present evidence of any approval as charities for these other purposes. This could then be taken into account in deciding on the extent of further investigation that is required before granting a licence for charitable collections.

2.17 Ten licences (or 66%) of the 15 licences reviewed by Audit, were not approved or reviewed by an appropriate supervisor within DUS. However, 14 licence applications or 93% were approved in a timely manner.

MONITORING

2.18 Charitable collectors are required to display either a badge or tag identifying the collectors name, the name of the charity, a description of the charity, if the name of the charity does not imply its function, and whether a collector is paid. Failure to display correct information is an offence under the Collections Act.

2.19 The Department only monitors this requirement for collections taken in open spaces. Based on discussions with staff and stakeholders, Audit assesses that there is a significant risk that many collectors are not complying with this requirement.

2.20 Under the Collections Act, all collection moneys must be deposited, within five days of collection, into a bank account that is used solely for the purposes of the collection.

2.21 None of the licensees reviewed submitted evidence to DUS detailing banking arrangements for charitable collections as required under Part 5 (45) of the Collections Act. Audit found no evidence of any follow-up of this requirement by the Department.

2.22 From the sample audited, of the ten licensees that were required to submit annual reports to DUS under section 48 of the Act, eight (80%) had not complied. Further, Audit found no evidence of any follow up of this requirement by the Department.

2.23 Under section 15 of the Regulation, annual accounts should be audited if the proceeds received in the ACT by the licensee, from collections carried out completely or partly in the ACT, in any 12 month period exceed \$50 000. Section 15 further requires that the licensee must give the Chief Executive audited annual accounts for the year or years in which the collection was carried out.

2.24 Under the Collections Act, there is no responsibility for the administering Department to monitor charitable collections where the expected collection is less than \$15 000 in one year. This creates problems with monitoring small collections, as there is no legal requirement for these collections to obtain a licence or report to DUS on the use of money collected.

2.25 Audit noted that a number of prominent charities active in the ACT did not hold licences for charitable collections. In addition, the public listing of collection licences did not include St Vincent De Paul, which holds a current charitable collection licence. Not keeping an accurate, up-to-date, publicly available listing of licences reduces accountability of collectors to the public and increases the risk of frauds in collections.

2.26 The Collections Act only requires the Department to monitor licensed collectors. Nevertheless, it would be prudent for the Department to take reasonable steps to advise unlicensed collectors and the public of the requirements of the legislation to protect public donations and the integrity of the collections process.

Liaison with stakeholders

2.27 The Fundraising Institute of Australia felt that current arrangements in DUS did not allow for adequate consultation with key stakeholders, nor were charitable organisations able to obtain advice regarding legislation where required.

2.28 In general, there was a lack of information publicly available to charitable organisations to encourage compliance with the Collections Act.

Complaints

2.29 DUS currently includes a listing of all active licences on its website to enable the public to check the validity of displayed licences at any time.

2.30 As there is no responsibility for monitoring charitable collections where the expected collection is less than \$15 000 in one year, DUS experiences difficulties in deciding whether a complaint about a collection is caught under the Act. Audit observed a number of cases where DUS decided that a complaint could not be pursued because the collection would be less than \$15 000. This gap in regulation poses significant risks of improper collection by a large number of small, unlicensed collectors. No complaints relating to licenced collections were noted.

2.31 DUS investigated no complaints about suspicious collectors, as they were either judged to be for collections for less than \$15 000 or interstate operators where the complaint was referred interstate.

2.32 The Department has no formal procedures in place for dealing with complaints or concerns raised by the public.

RESOURCING AND TRANSFER OF FUNCTION

2.33 Audit noted that DUS devoted few resources to the administration of the function. In addition, Audit was informed that there was little scope within the Department to provide additional advice and assistance to charities or licensees.

2.34 The nature of charitable collections has changed in recent years from persons collecting money in the street to be a more national or international business using telephones, e-mails and the internet to collect for charity. Consequently, the placement of the function in the Canberra Urban Parks and Place group of DUS may no longer be appropriate. Accordingly, DUS has been negotiating with JACS since 2003 to transfer the function. DUS offered JACS \$55 000 to fund the function. However, JACS estimated the cost of carrying out the function at \$131 000 per year, which includes both administration and policy. This led to an impasse which, despite the intervention of the Chief Executive of the Chief Minister's Department, had not yet been resolved at the time of the audit.

2.35 The current administrative arrangements placing the function within DUS's Urban Parks and Places group (where there are no similar regulatory functions) are unusual and may contribute to the poor management of this function. Most Australian states include the regulation of both charitable collections and incorporated associations under either an Office of Fair Trading or Consumer Affairs function. Moving the function from DUS into JACS and possibly the Office of Fair Trading would be desirable and also consistent with other states and territories.

2.36 Audit considers it important that the responsibilities for this function be given proper attention, preferably by JACS, and therefore the Departments need to agree on the terms of the transfer of the function as soon as possible.

CONCLUSION

2.37 Overall the application, review, monitoring and complaints processes of charitable collection licences are seriously deficient, as they do not adequately address risks of charitable collections not being conducted according to the legislation and do not protect the public interest. In addition, the current procedures leave a gap in regulating annual collections under \$15 000, leading to high risks of improper collections. DUS, as the administering Department, monitors collections only in open spaces. It does not pursue complaints about suspicious collections in the ACT. This situation falls short of community expectations and increases the risk that the community is subjected to fraudulent collection activities.

Recommendation 1

The Department of Urban Services should expedite negotiations with the Department of Justice and Community Safety (JACS) on the transfer of the charitable collections function, as JACS is a more appropriate Department to administer this function.

Recommendation 2

The Department of Urban Services should conduct a risk analysis of charitable collections activity in the ACT and institute an effective monitoring and reviewing regime in response to the risks identified.

Recommendation 3

The Department of Urban Services should prepare formal guidelines detailing the process used to decide whether a charitable collection meets the requirements of the Act prior to issuing the licence.

Recommendation 4

The Department of Urban Services should review the current threshold for collections requiring a licence, and consider options that include extending the need for licensing (if not reporting) to include charitable collections under \$15 000.

Recommendation 5

The Department of Urban Services should ensure the current database of collections licences is accurate and ensure that the public record is consistent with the database.

3. INCORPORATED ASSOCIATIONS

INTRODUCTION

3.1 This Chapter assesses various stages of the Incorporated Association application and approval process and regulatory activities associated with those associations approved.

KEY FINDINGS

- The incorporation process is reasonably efficient and timely.
- The monitoring of incorporated associations is currently sufficient to meet the requirements of the Associations Act.
- The RGO currently has no formal procedures in place for handling complaints about incorporated associations.
- The Associations Act anticipates that Associations will be self-regulating. There is a risk to effective governance when members do not involve themselves in controlling their Associations. This risk is more significant for larger associations with significant revenue, assets and liabilities.

BACKGROUND

3.2 A significant number of social, community, special interest and sporting groups incorporate under the *Associations Incorporation Act 1991* (the Associations Act). The Act provides a simple and inexpensive way of establishing a legal entity that has the ability to function in its own right and provides protection for its members from the debts and liabilities of the association.

3.3 Incorporated Associations are regulated under the Associations Act. At present the Registrar-General's Office (RGO) is responsible for the administration of this Act. As at 30 June 2005, there were 2431 incorporated associations in the ACT.

3.4 Audit noted that although the legislation was intended for small organisations, over time, there are also significant businesses being incorporated and regulated under this Act.

3.5 ACT incorporated associations operate businesses ranging in size from those with minimal assets and membership numbers (e.g. P&C, school and social groups) to those with over 100 000 members and \$16 million in assets (e.g. sporting clubs). Satisfactory administration of large associations in particular is important to protect the interests of members and the ACT community.

3.6 The principal focus of the RGO, in relation to the Associations Act, is to ensure that the public record is clear and up to date so that any third party dealing with

an incorporated association does so in full knowledge of the incorporated association's affairs.

3.7 The RGO is not required under the Associations Act to monitor incorporated associations activities outside of checking that their annual returns are submitted, ensuring proper disposal of assets on wind-up and ensuring incorporation details are kept up to date. Complaints regarding internal affairs within an incorporated association must be dealt with internally according to the rules of the association.

3.8 Every association must have a set of rules, often known as a constitution. The way in which an association operates is largely governed by its rules. The Registrar-General does not have the power to investigate a breach of an association's rules or intervene in internal disputes.

3.9 The RGO does not offer legal advice or intervene in the internal matters of incorporated associations that involve members' disputes. It has no authority to do so under the Associations Act. The Associations Act specifically entitles any member to resolve their own internal disputes either by calling a special or general meeting or to seek resolution through the courts system.

3.10 Incorporation provides associations with legal status and places certain obligations upon them, including establishing and maintaining their public record. To this end, incorporated associations are required to lodge with the RGO, annual financial statements and notification of changes to their committees, public officers and registered offices. Associations are also required to notify the RGO when they resolve to change their name, amalgamate with another ACT incorporated association or to voluntarily wind-up.

3.11 Associations are required to apply, in writing, to the RGO for incorporation. Approval of applications is dependent upon satisfying a number of criteria including the objectives of the association, the appropriateness of office bearers and the availability of the name of the association. For this purpose, a checklist has been prepared by the RGO to assist in the approvals process.

APPLICATIONS FOR INCORPORATION

3.12 To incorporate in the ACT, associations must comply with a number of criteria including the number of members registered, the name of the association, residency requirements and ensuring the objectives and purposes of the association comply with the Associations Act. In addition, the association must either adopt the model rules provided or rules that are consistent with the model rules.

3.13 The RGO ensures details are correct to the extent practicable. If the application satisfies the requirements of the Associations Act, the RGO will issue a Certificate of Incorporation to the lodging party.

3.14 Audit reviewed a sample of 19 incorporated associations applications. Of these, one (5%) did not comply with the requirements of the Act. This error was identified by a member of the association and the application was subsequently corrected and resubmitted for approval.

3.15 No other issues were noted during the audit of approved applications.

MONITORING

3.16 As indicated above, the RGO's monitoring role is limited to checking that annual returns are submitted, ensuring proper disposal of assets on wind-up and ensuring incorporation details are kept up to date. Larger associations are required to have their accounts audited by an approved person (generally a qualified accountant or a registered company auditor).

3.17 Under the Associations Act, Incorporated Associations are required to submit annual returns to the RGO giving a summary of the Association's financial situation and details of its committee members. RGO issues reminders to those Associations who fail to lodge annual returns within six months of the due date.

3.18 The audit noted 100% of the associations reviewed had received a notice or reminder to submit their annual return to the RGO within six months of the end of the association's financial year.

3.19 Under the Associations Act, an association that does not lodge an annual return for three consecutive years may have its incorporated status cancelled.

3.20 Audit reviewed ten cancellations from the 2004-05 financial year. Of the cancellations reviewed, six or 60% had their incorporation status cancelled as a result of non-lodgement of three consecutive annual returns. This result suggests the current policy may expose an association to risks of mismanagement or fraudulent activity going undetected for up to three years, as there is no policy of follow-up or investigation of potential mismanagement in the intervening years. Given that an average of 140 associations had their incorporated status cancelled over each of the last three years, it is reasonable to assume that at least 80 associations fail to lodge annual returns each year.

3.21 Audit was unable to obtain exact statistics on the number of associations that fail to lodge annual returns when required. It is considered important that systems used to record information are also able to provide readily accessible information to the user. Consideration should be given to improving the current system to better enable reporting of statistics on incorporated associations, for more effective regulation of non-compliant associations.

3.22 All annual returns are audited by an independent auditor selected by the association and this auditor must be a person who is not an officer of the association and who has not prepared or assisted with the preparation of the accounts.

3.23 If the association:

- has gross assets in excess of \$150 000;
- has gross income in excess of \$150 000;
- holds a licence issued under the Liquor Act 1975; or
- has more than 1 000 members,

the auditor must pass more stringent independence tests and hold one of the following qualifications (Section 74 (3) of the Act & Regulation 12):

- Member, Institute of Chartered Accountants in Australia;
- Member, National Institute of Accountants;
- Member, Australian Society of Certified Practising Accountants; or
- a person registered as an auditor under the Corporations Law (often known as a Registered Company Auditor)

3.24 For larger associations with income greater than \$500 000, the legislation specifies a more detailed audit, and the auditor must be a Registered Company Auditor.

3.25 The RGO does not currently monitor this requirement. It is suggested that the RGO should consider conducting random audits of annual returns to ensure larger organisations meet these requirements.

Cancellation of Incorporated Status

3.26 Under the Associations Act, associations can have their incorporated status cancelled for a number of reasons, including non-submission of annual returns, wind-up of operations and movement to company status.

3.27 The RGO has in place a cancellation checklist to ensure all necessary steps have been addressed including, for instance, ensuring public notices have been provided where applicable, ensuring all assets of the association have been properly disposed of and debts accounted for, ensuring RGO internal records have been updated and a cancellation notice has been sent to the association.

3.28 During the 2004-05 financial year, 130 associations had their incorporated status cancelled.

3.29 The Audit reviewed ten cancellations from the 2004-05 financial year. All necessary steps were conducted by the RGO during the cancellation process and Audit noted no errors in the cancellations process.

Complaints

3.30 The principal focus of the Associations Act is to ensure that the public record is clear and up to date so that any third party dealing with an association does so in full knowledge of the association's affairs.

3.31 An association may choose to either adopt the model rules set out by the RGO or to compile its own rules.

3.32 If an association decides to compile its own rules, it must ensure the rules comply with the matters set out in Schedule 1 of the Associations Act, which details matters to be provided for in rules other than model rules, otherwise the model rules apply to those specific matters omitted from the compiled rules.

3.33 Under limited circumstances, the RGO may investigate an association "for the due administration of the Act". Essentially, these circumstances arise if the RGO has reasonable grounds to believe that an offence against the Associations Act, or an offence relating to an incorporated association, has been or is being committed, which involves:

- fraud;
- dishonesty; or,
- concerns about the management or affairs of an incorporated association.

3.34 On review of the complaints register by Audit, no complaints were noted that required an official RGO investigation. Complaints about associations appear to relate to management issues rather than financial error or fraud. However, Audit noted that no formal procedures existed detailing the RGO's assessment and response to complaints.

3.35 The RGO has a formal complaints policy designed to deal with complaints made concerning the operations of the Office across all its business areas, including the regulation of incorporated associations. However, this is not designed to deal with complaints about the operations or management of particular associations.

3.36 The RGO stated that complaints or suggestions for investigations into associations are dealt with administratively. Usually the Registrar-General writes to the person(s) making the complaint; these types of complaint often concern the internal affairs of the association and are not matters for the Registrar-General.

3.37 Where the Registrar-General considers there are grounds for intervention, he will do so usually by writing to the association seeking advice on the matters that have been raised, indicating that he may be considering initiating a formal investigation under Section 101 of the Act.

3.38 The Audit did not examine the merit or otherwise of the legislation. However, Audit observed that the legislation anticipates that Associations will be self-

regulating and therefore there is a risk to effective governance when members do not involve themselves in controlling their Associations. This risk is more significant for larger associations with significant revenue, assets and liabilities.

COMPARISON WITH OTHER JURISDICTIONS

3.39 All Australian states and territories provide for an Associations Incorporation Act in some form. The majority of states delegate responsibility for this Act to an agency similar in function to the RGO or the Office of Fair Trading.

3.40 Overall, the focus of other jurisdictions is also on self-governance of incorporated associations with minimal regulation provided for in the Acts. The ACT is among the jurisdictions that provide a greater degree of regulation.

3.41 The majority of these Acts have similar requirements to the ACT. These include requiring associations to:

- submit annual returns to an office similar in function to the RGO;
- provide audited accounts for accounts above a prescribed amount;
- resolve internal disputes either through the association itself or through the courts; and
- conduct annual general meetings.

3.42 Some jurisdictions are less restrictive than the ACT. For example, the Western Australian (WA) *Associations Incorporation Act 1987* does not require associations to submit annual returns. However, a 2005 report by the WA Auditor-General suggested best practice would be to include such reporting to ensure that associations are operating legitimately and in accordance with the legislation.

CONCLUSION

3.43 Overall, the application, cancellation, monitoring and complaints processes used by the RGO were sound and met the requirements of the Associations Act.

Recommendation 6

The Registrar-General's Office should ensure there is a documented process on complaints about the operation of Incorporated Associations to ensure that any valid concerns raised are reviewed and action taken.

Recommendation 7

The Registrar-General's Office should consider conducting random checking of annual returns to ensure associations have their annual accounts audited as required by the Act.

Recommendation 8

The Registrar-General's Office should consider following up with larger associations if they do not comply with the requirement to submit annual returns in the intervening three years prior to cancellation.

Appendix A

ORGANISATIONS HOLDING LICENCES UNDER THE CHARITABLE COLLECTIONS ACT 2003

This list is based on the information provided by DUS as at 8 February 2006.

ACT Down Syndrome Association Inc	Medecins Sans Frontiers Australia
AIDS Action Council of the ACT Inc.	Mental Health Council of Australia
Amnesty International Australia	Mental Health Foundation (ACT) Inc.
Angel Flight Australia	Mr Sean David Godwin (Murray and Jane Eastman)
Anglicare Council	Multicap
ANZ Breast Cancer Trial Group Ltd/Breast Cancer Institute of Australia	Multiple Sclerosis Australia
Australasian Gastro-Intestinal Trials Groups	Multiple Sclerosis Research Australia Limited
Australasian Stepping Stones Foundation	Multiple Sclerosis Society of the ACT Inc.
Australia for UNHCR	Myer Community Fund
Australian Association of the FEPCOW Project	National Brain Injury Foundation
Australian Bush Heritage Fund	National Breast Cancer Foundation
Australian Conservation Foundation	National Jockeys' Trust
Australian Huntington's Disease Association (NSW) Inc.	National Police Memorial
Australian Red Cross	Oncology Children's Foundation
Autism Association of the ACT Inc.	OPSM I-Care Foundation
Barnardos Australia	Ovarian Cancer Research Foundation Inc
Belconnen Community Service Inc.	Parkinson's (ACT) Inc.
Bonnie Babes Children's Charity Foundation	Pixi Foto Foundation
Bonnie Babes Foundation	Public Trustee for the Australian Capital Territory
Breast Cancer Network Australia	Queensland Institute of Medical Research Trust
Bridge Back to Life Foundation	RACGP
Calvary Chapel United Pentecostal Church Inc	RBS.RVIB.VAF Limited trading as Royal Blind Society
Camp Quality Limited	Real Help for People
Canberra Blind Society Inc.	Rett Syndrome Australian Research Fund
CanTeen-Australian Organisation for Young People Living with Cancer	Ronald McDonald House Charities
Child Flight Inc.	Royal Flying Doctor Service of Aust. (South Eastern Section)
Children's Cancer Institute Australia	RSPCA Australia Incorporated
Clever Planet Pty Ltd.	Samaritan's Purse Australia Ltd.

Appendix A - Organisations holding licences under the Charitable Collections Act

Comic Relief Australia	SIDS and Kids ACT
Diabetes Australia - ACT	Southcare Helicopter Fund Pty Ltd.
Dymocks Literacy Foundation	St John Ambulance Australia Inc.
Earthwatch Institute	St Vincent De Paul
Education Australia (International Enterprises) Pty Ltd.	Starlight Children's Foundation of Australia
Father Chris Riley's Youth off the Streets	Sydney Opera House Trust
Global Pacific Safety Foundation	The Alannah and Madeline Foundation
Guide Dogs NSW/ACT	The Arnott's Foundation Pty Ltd.
HADA	The Cancer Council ACT
Hartley Lifecare Inc.	The Heart Research Institute
Hear and Say Centre for Deaf Children	The Lions Club of Canberra City Inc.
Heart Foundation	The NSW Auxiliary of the British and Foreign Bible Society
Hearts of Hope Australia Limited	The Oak Tree Foundation Inc.
Hope Foundation	The Order of Australia Association Foundation Limited
InsideOut Group Pty Ltd.	The Rotary Club of Belconnen Inc.
International Centre for Eyecare Education	The Salvation Army
International Diabetes Institute	The Scout Association of Australia, ACT Branch Inc.
International Fund for Animal Welfare (Australia) Pty Ltd.	The Shane Warne Foundation
Julian Burton Burns Charity Ltd	The Smith Family
Karinya House Home for Mothers & Babies Incorporated	The Spastic Centre
KIDS Foundation	The Trustee for the Leeuwin Estate Charitable Foundation
Koomarri Association	The Young Men's Christian Association of Canberra Incorporated
Legacy Club of Canberra Incorporated	UNICEF Australia Health Limited
Lifeline Canberra	UNIFEM Australia Inc.
Limelight Foundation Inc.	Union Aid Abroad-APHEDA
Macular Degeneration Foundation Limited	United Grand Lodge of NSW and the ACT
Make-A-Wish Foundation of Australia Limited	University of Canberra
McGrath Foundation Limited	Volunteering Australia Inc.
	Winnunga Nimmityyah Aboriginal Health Service

Appendix B

AUDIT OBJECTIVE

The objective of this audit is to provide an independent opinion to the Legislative Assembly on whether

- charitable collections and incorporated associations are currently being adequately monitored and controlled; and
- administration of the functions is consistent with the relevant Acts.

AUDIT APPROACH

The audit:

- examined the legislation, policies and procedures to be followed during regulatory and monitoring activities associated with incorporated associations and charitable collections licences;
- considered the availability and usefulness of guidelines or other guidance material on regulation and monitoring of incorporated associations and collections licences; and
- held discussions with various agencies, including the Department of Justice and Community Safety.

AUDIT CRITERIA

The audit was conducted in accordance with Australian Performance Auditing Standards and assessed the performance of selected agencies on reporting against the following primary criteria:

- where relevant, agency-specific guidance should exist and be compliant with the policy requirements of the ACT Government;
- agencies' regulatory functions are consistent with the provisions in the *Associations Incorporation Act 1991* and the *Charitable Collections Act 2003*;
- agencies should have systems, guidelines and processes to meet reporting requirements that are in accordance with better practices; and
- controls should be in place to ensure relevant records are accurate, complete and independently verifiable.