



24 November 2009

Mr Robert Fitzgerald AM
Commissioner
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601

Dear Mr Fitzgerald,

**Productivity Commission Draft Report into
Contribution of the Not-for-Profit Sector**

Associations Forum Pty Ltd expresses its appreciation to all involved in of the production of this comprehensive and impressive recent Productivity Commission draft report into Contribution of the Not-for-Profit Sector. We are optimistic that it may lead to positive change in regulation of the sector and we appreciate the opportunity to give input.

Draft recommendation 6.1

The Australian Government should establish a Commonwealth incorporated associations legal structure for not-for-profits. The new legal structure would assist not-for-profits, in particular those operating across state and territory boundaries, that do not wish to be companies limited by guarantee but wish to be incorporated at the Commonwealth level.

Associations Forum Pty Ltd does not believe this recommendation is necessary. We believe that the Corporations Act is an appropriate piece of national legislation and that companies limited by guarantee are an appropriate legal entity. This recommendation complicates rather than simplifies the regulatory framework.

Many not-for-profit organisations are incorporated as companies limited by guarantee and in our opinion these organisations are satisfied by the structure. We are not aware of reasons that an organisation seeking to operation nationally would have to object to this form of incorporation.

We do, however, suggest that some work could be done on minor

amendments to the Corporations Act in this regard. For example, these legal entities may be better called “*corporations limited by guarantee*” to reinforce the fact that they are not business entities with tradable ownership. We also believe that a suffix other than “Limited” or “Ltd” should be considered and suggest “Cty Ltd” may be of use as it implies a community connection.

Associations Forum believes that there should be a clear recommendation that the States and Territories of Australia to develop a uniform Association Incorporation Act.

Draft recommendation 6.1

Australian governments should ensure that incorporation legislation is amended to allow not-for-profits to migrate from one form of legal entity to another and to migrate between jurisdictions.

Associations Forum supports this recommendation and notes that it should be easy to implement. Our knowledge of the Associations Incorporation Act of the various states and territories indicates that Queensland, WA and SA are states that require changes to their Associations Incorporation Act.

However, this issue would be resolved by one uniform or model act with an appropriate migration clause.

The Commission seeks comments on:

- *whether there is a need for a new legal form for small unincorporated associations, similar to the Australian Business Name registration, providing limited legal rights*

Associations Forum does not think there is need for a new legal form for small unincorporated associations. If a small group wishes to incorporate, they should incorporate under the Associations Incorporation Act as that is the purpose of such legislation.

The Commission seeks comments on:

- *whether state/territory based incorporation of associations should be restricted to not-for-profits with income less than \$150 000 per annum*

We support this suggestion. Another possibility would be to link the amount to GST registration thresholds.

The Commission seeks comments on:

- *how governments can free up the ability of organisations to migrate between legal forms and jurisdictions, while guarding against any undesirable consequences from forum shopping.*

Associations Forum questions whether forum shopping is an actual problem rather than a possibility. However, the recommendations above regarding migrating from being an incorporated association under a state or territory act to the Corporations Act should make it easier to move in this direction. We do not believe that companies limited by guarantee should have the ability to move to the possibly easier regime of the Associations Incorporation Act.

Regarding shopping for jurisdictions, if it does occur, we believe a uniform Associations Incorporation Act will mean that this possibility does not arise.

Draft recommendation 6.2

To promote confidence in the not-for-profit sector and reduce regulatory burden, Australian governments, initially through the COAG Business Regulation and Competition Working Group, should:

- *agree to and implement harmonised fundraising regulation and mutual recognition across Australia*
- *support the development of a fundraising register for cross jurisdictional fundraising organisations, to be administered by the proposed national Registrar*
- *endorse the adoption by all governments of the Standard Chart of Accounts for reporting by not-for-profits in receipt of government grants or service contracts*
- *ensure that the Standard Business Reporting initiative be expanded to include reporting requirements by not-for-profits.*

Associations Forum does not believe these recommendations regarding fundraising are strong enough. We believe that the Productivity Commission should recommend that there be a national Fundraising Act under Commonwealth legislation.

While endorsing the principle of standardisation of reporting by not-for-profits in receipt of government grants or service contracts, we believe the terminology “Standard Chart of Accounts” is confusing and should be changed. The term chart of accounts is well known to students and practitioners of accounting. This accepted definition does not, in our

opinion, described the process of standardisation of reporting. It would be a pity if this terminology confusion detracted from a valuable initiative.

Draft recommendation 6.3

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 with the following key functions to promote confidence in the not-for-profit sector:

- *register and regulate Commonwealth incorporated associations, companies limited by guarantee and Indigenous corporations*
- *register and endorse not-for-profits for commonwealth tax concession status*
- *registration of cross-jurisdictional fundraising by not-for-profit organisations*
- *a single reporting portal for public record corporate and financial information, proportionate to the size and scope of functions of not-for-profit organisations*
- *provision of appropriate governance education*
- *complaints handling.*

Draft recommendation 6.3

Australian governments should provide support to develop and promote training for not-for-profit management and boards in governance and related areas. They should explore the options for improving access to and quality of such training in these areas with peak bodies and appropriate training providers.

Associations Forum understands the need for a registrar for the sector. We are concerned that there is no public portal regarding tax concession status rationale and that financial and governance information, such as names of directors, is not available for free. The proposed registrar would likely address these issues and also be an ideal place for matters regarding complaints. We add that we believe the Australian Taxation Office is not the best entity to be the de facto regulator of the sector.

However we have some concerns.

We believe that the Productivity Commission report, primarily impacting on the charity and community benefit part of the not-for-profit sector, may increase burdens on member serving associations that do not derive

funding from the government or the public. We suggest that associations that receive no government or public funding and who receive taxation benefits on the principle of mutuality could be excluded from this register.

We are concerned that state and territory incorporated associations that are charities or have community benefit purposes will be excluded from this register. This may lead to the type of ‘forum shopping’ that this report elsewhere wishes to avoid.

Regarding the provision of appropriate governance education, we believe this is a major task that should be left to the players who currently provide governance education for their particular part of the not-for-profit sector. We do believe that “facilitation (rather than ‘provision’) of appropriate governance education” would be a valuable function for the registrar.

As for the name of the registrar, we believe “Registrar for Community and Charitable Purpose Organisations” is not quite right. We believe most charities are there to support the community so that it is unnecessary to have both terms “community” and “charity” in the title. We think “Registrar for Charities” is a better name.

We applaud the use of the word “Registrar” rather than “Commission”.

If the decision is made to include membership associations under the registrar, they should be expressly mentioned in a name such as “Registrar of Charities and Associations”. Associations Forum believes that many associations would not necessarily describe themselves as existing for a community purpose. They exist to advance their particular mission that, in a free society, may not necessarily be to the advantage of the community as a whole.

The Commission seeks comments on:

- *whether the proposed national Registrar be a separate agency under the Financial Management and Accountability Act 1997, or whether it should be an additional function and separate division of the Australian Securities and Investments Commission*
- *the appropriate reporting thresholds and requirements under the Registrar’s proposed functions.*
- *whether the Office of the Registrar for Indigenous corporations should be transferred to the new regulatory organisation.*

Associations Forum strongly supports the proposed national Registrar being an additional function and separate division of the Australian Securities and Investments Commission (ASIC). ASIC already does an admirable job in the regulation of corporations, some of which are companies limited by guarantee. It has established systems, technology and procedures that work well.

To the argument posed that ASIC does not understand the not-for-profit sector, we counter that ASIC is a professional operation that has not yet been asked or trained to undertake this role. We see no reason that it could not be an appropriate regulator for not-for-profits incorporated under the Corporations Act, a uniform Associations Incorporations Act, indigenous corporations legislation, under Royal Charter and their own Act of Parliament.

We also believe that this would be the most cost-effective way forward.

About Associations Forum

Associations Forum Pty Ltd is a privately owned for-profit entity that provides services to associations and charities. Our mission is “bringing associations and charities together to boost performance”. Over 350 not-for-profit organisations subscribe annually to our education and information services, and hundreds more organisations participate in these events or are involved in other projects.

Thank you for your interest in this response.

Yours sincerely,



John Peacock
General Manager

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