



# OFFICE OF REGULATION REVIEW

INDUSTRY COMMISSION

Corporations Law  
Simplification Task Force  
Attorney General's Department  
BARTON ACT 2600

Attention: Mr. Ian Govey

## Company Names— Proposals for Simplification

The Office of Regulation Review (ORR) offers the following comments on the Company Names element of the Corporations Law Simplification Program.

The ORR — located within the Industry Commission — is responsible for advising on the Commonwealth Government's regulation review policy. The ORR reviews new regulations, monitors progress and participates in programs for the reform of existing regulations, and provides public information on regulatory matters.

In making these comments the ORR seeks to assist the Simplification Task Force achieve its objective of simplifying the Corporations Law, including the goal that:

**'Action to simplify the content will concentrate on those sections of the law where policies: are unclear or uncertain or no longer relevant; do not cater to the needs of small business; place undue regulatory burden on business; thwart the efficient operation of the law; and do not achieve their objectives on technical grounds. The objective is to streamline the law, procure consistency and coherence, strip away unnecessary complexities, maintain effective protection for investors, and bring significant cost benefits both to business in complying with the law and to relevant authorities in administering it.'** (Corporations Law Simplification Program 'Plan of Action', December 1993)

The ORR's comments focus on those proposals (4, 5, 6 and 7) which would revise the process of allowing a company to omit the word 'Limited' from its name.

These proposals are designed to streamline the process relating to the granting of exemptions for incorporated entities — which comply with certain conditions — from the requirement to include 'Limited' in their formal name. At the present time, some charitable/benevolent organizations use this exemption, whilst others do not. For example, RSL (Qld) War Veterans' Homes Ltd has not obtained an exemption from including the word 'Limited' in its company name. By contrast, other charities such as Care Australia,



Benjamin Offices, Chan Street,  
Belconnen ACT 2616  
PO Box 80, Belconnen ACT 2616  
Telephone: 06 264 2705  
Facsimile: 06 264 3257

the Brotherhood of St. Laurence and the Sydney City Mission are incorporated as companies but do not include the word ‘Limited’ in their names.<sup>1</sup>

However, the Task Force does not appear to have identified a rationale for the proposed exemption, nor discussed its costs and benefits. In these respects, the ORR offers the following comments.

The proposals appear to be inconsistent with the general principle of including the word ‘Limited’ in the name of incorporated entities with limited commercial liability. Allowing some companies to be exempt from including the word ‘Limited’ in their name could be misleading to parties engaging in commercial transactions with such companies.

Not including the word ‘Limited’ in the name may, for example, suggest that a company’s goals and operation do not include generation of profits from commercial activities, although the proposed conditions of exemption do not preclude these activities. However, the ORR notes that any advantage arising from not including ‘Limited’ in its name might be lessened by the legal requirement that all companies — including charities and other non-profit entities — have an Australian Company Number (ACN), and that they must include this number on all official documentation and correspondence.

In addition, there is scope for not-for-profit organizations to incorporate under other various State Acts, including the *Friendly Societies Act (Vic) 1986* and the *Co-operation Act (Vic) 1981* etc. In such cases, the word ‘Limited’ would have to be used in an incorporated entity’s name, whilst incorporation through the Corporations Law could allow exemption for use of the word ‘Limited’ in a company name. Therefore, depending on the Act under which the entity incorporates, this proposal could lead to inconsistent treatment in the naming of organizations, and possible inconsistent information provided to the public.

The ORR notes that there is no provision for exempting not-for-profit companies from the requirement to have ‘Limited’ in their name in the New Zealand *Companies Act 1993*. This New Zealand act allows only unlimited liability companies to be exempt from the requirement to include ‘Limited’ in a company name.<sup>2</sup> This potential difference serves as a reminder that the capacity of international business to become readily familiar with Australian corporate regulations is an increasingly important consideration in the simplification of any law.

It is also relevant to note that the proposals delegate responsibility to the regulator, the Australian Securities Commission (ASC), to supervise, assess and grant applications for exemptions. The cost of exempting these companies, supervising them to ensure they do not breach the conditions of their exemption and, the cost of any remedial action, adds to the overall cost of administering the Corporations Law. Therefore, this proposal needs to be tested against the goals of the Task Force, which include bringing significant cost benefits both to business in complying with the law and to relevant authorities in administering it (see quote above).

The ORR believes that one alternative least cost approach, which could be considered, is that companies which currently have an exemption from the requirement to include

---

<sup>1</sup> Industry Commission 1994, Draft Report, *Charitable Organisations in Australia*, Canberra, 27 October, attachment 1.

<sup>2</sup> Section 73, *New Zealand Companies Act 1993*

'Limited' in their name be allowed to keep their exemption, but that no more exemptions be granted. The advantages of this approach are that it:

- would not be retrospective;
- will increase the effective protection of investors by clearly identifying all new companies registered which have limited commercial liability;
- could simplify the law by removing a section of the Law that does not appear to be warranted, or to be consistent with other legal rules and regulations; and
- would provide cost savings to the ASC, as they will not have to administer a resource intensive regulation.

The contact officer on these matters is Mr. Barry Oliver whose telephone number is 2642228.

Paul Coghlan  
Assistant Commissioner  
10 February 1995.