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Inquiry into the Disclosure Regimes for Charities and Not-for-Profit Organisations

Thank you for the opportunity to make a submission to this Inquiry.

The Human Rights Arts & Film Festival Inc is a very young organisation, having only come into existence as an incorporated association under Victorian law in February 2007. Our main activity is to organize an annual arts and film festival exploring human rights issues. In November 2007, we staged such a festival in Melbourne, Sydney and Perth. This year, we will be staging the festival in Melbourne, Sydney, Perth, Canberra and Darwin.

Our aims are to:

- advance and encourage the education, debate and awareness of human rights issues amongst the broader community through art and film;
- create a stronger, diverse and more cohesive human rights community within Australia; and
- showcase and support Australian and international artists who are concerned with contemporary human rights issues, and specifically by and about indigenous Australians.

HRAFF is a volunteer-run organisation with an annual turnover of less than \$100,000. We have about 25 core volunteers based in Melbourne then another 30 or so volunteers based in other states. Many of our volunteers put in roughly 10 to 25 hours a week into the organisation while juggling many other work, family, study and social commitments. There are even times in the year where volunteers may work up to 75 hours a week.

As such a young organisation, we have experienced first-hand many of the difficulties that start-up not-for-profit organisations face in terms of governance, regulation and compliance with

various laws. We attempt to outline some of the major issues we have faced below. Many of these experiences go to highlighting the issues raised in the Inquiry's terms of reference.

We would be happy for this submission to be released publicly. We would also be pleased to appear at any hearings held by the Inquiry in order to further elaborate our experience.

ACCESS TO LEGAL COUNSEL

HRAFF has been extremely lucky in that we have had access to free legal advice through a number of major law firms for many of our legal issues. We also have a qualified lawyer informally acting as our in-house legal advisor and has been extremely diligent and helpful in terms of providing us with constant legal guidance. We have needed guidance for the following legal issues: incorporation, tax (DGR, TCC status), sponsorship contracts, licensing agreements, fundraising, governance and structure, intellectual property, insurance and employment law. We have received approximately 500 hours of pro-bono legal assistance in just over 18 months.

PilchConnect have assisted us on a number of occasions to connect us with various pro-bono lawyers. We have also attended a number PilchConnect seminars designed for NFPs and have found these very informative.

Without such extensive access to legal counsel, we would not have been able to establish ourselves and grow as rapidly as we have, nor would we have been able to successfully put on the festival last year. It is concerning, however, that such a small not-for-profit organisation has required so much legal advice just to get started and do the most basic things.

One of the biggest hurdles we have had to face as a new and emerging not-for-profit organisation is trying to get our heads around all the many and varied laws applicable to not-for-profits. HRAFF agrees with many of the findings of PilchConnect's submission to the Inquiry that the legal framework applicable to not-for-profits is complex, burdensome, confusing and full of 'red tape'.

LEGAL ISSUES

Below is a summary of some of the major legal issues that we have faced in our 18 months of existence:

1. Organisational Structure

The first issue we faced was our organisational structure. There seemed to be many different options before us, most of them we did not fully understand but the three most practical seemed to be:

- (1) attempt to get auspiced by another organisation;
- (2) incorporate as a company limited by guarantee under the *Corporations Act 2001* (Cth); and

(3) incorporate as an incorporated association under the *Associations Incorporation Act 1981* (Vic).

Option (1) was initially the most attractive as it could have given us easy access to deductible gift recipient (DGR) status under taxation law, thereby giving us eligibility for certain grants. We did not follow this path because of the uncertainty regarding the jeopardising of any host organisation's DGR status (assuming we could find a host willing to take us on), and could have hampered our independence.

Option (2) was attractive to us as it meant that we would be able to operate in all jurisdictions in Australia. As we ultimately intended for the festival to tour interstate, this seemed like the best option of the three listed above. However, upon further research we decided against incorporating as a company limited by guarantee as the process was expensive (over \$1000) and extremely burdensome (in terms of the financial, administrative and reporting obligations). As a completely volunteer-run organisation we didn't feel confident that we would have the resources to be able to fulfil all of these obligations. However, as we grow rapidly, it seems more and more likely that we will eventually have to change our current structure. If we do decide to do this, however, it means that we would have to re-apply for DGR status, ABN and other tax exemptions which is time consuming, burdensome and provides us with organisational uncertainty. It also means it will be a lot more expensive for us to operate.

Option (3) was the most feasible in terms of cost and reporting obligations and was ultimately the structure that we opted for. The process was relatively simple and cheap enough (approx \$150). We obtained pro bono legal assistance to write our Rules and to register with Consumer Affairs Victoria as an incorporated association. When the opportunities arose to tour the festival to Sydney and Perth last year, however, we received legal advice informing us that this may constitute trading and conducting business interstate which, absent registration with ASIC, would run contrary to law. As such, the group running the Sydney leg of the festival were advised to incorporate as HRAFF NSW (Inc) i.e. as a separate incorporated association under NSW law. Due to lack of time and resources, the Perth group remained unincorporated.

However, at the end of the year, due to the confusion, risk and difficulties we faced by having state-based HRAFF organisations, we advised HRAFF NSW (Inc) to wind up operation and begin to operate through HRAFF Inc (Vic). In order to operate in more than one state, we have had to register with ASIC as an Australian Registrable Body under the *Corporations Act 2001* (Cth), which has imposed additional compliance and reporting obligations on the organisation. This combination of being an incorporated association but also reporting to ASIC is very unsatisfactory in terms of being subject to different multiple regulatory regimes.

Currently, in terms of compliance and regulation, HRAFF currently has to ensure:

- compliance with its constitutional procedures;

- compliance with the requirements of the *Associations Incorporations Act 1981* (Vic); and
- compliance with certain provisions of the *Corporations Act 2001* (Cth).

It is very difficult to understand the regulatory regime and understand which structure is the best one for us. While we are a small organisation, we still would like to operate nationally. However, there is currently no structure available to us that will enable us to do this affordably and efficiently. We would certainly be in favour of reform in this area to better cater for the needs of NFPs. This will be an ongoing issue for us as we try to fit our organisation into one of these ill-fitting structures.

2. Taxation Status

HRAFF has been relatively successful in proving its charitable status. However, this has not been without extensive pro bono legal advice and assistance. HRAFF achieved endorsement to operate a DGR fund on 28 November 2007. HRAFF's endorsement is based on its status as an eligible cultural organisation listed on the Register of Cultural Organisations (ROCO) administered by the Department of the Environment, Heritage and the Arts.

Key compliance requirements regarding DGR status includes reporting donation-related activity to ROCO for every 6 month period and notification of any change to the address of the organisation, membership of the Committee, membership of the sub-committee administering the DGR fund etc. It is normal practice for the DGR status of an organisation to be reviewed every 2-3 years.

We have also succeeded in our application for Tax Concession Charity (TCC) status which enables us to receive exemption from income tax and fringe benefits tax obligations and eligibility for GST charity concessions.

Without specialised legal assistance, we would not have been able to access the tax benefits that exist for NFPs. It is difficult to understand the difference between all the tax concessions available for NFPs and why we need to make different applications for different statuses. Different statuses also require different compliance obligations, which further complicates the matter.

3. Employment and Volunteer Law

This area of law is a minefield for our organisation which is in the transition from being a completely volunteer-run organisation to one that contracts or employs people to fulfil various roles and services. As a very small, low-resourced organisation who can not currently afford to pay its staff, it is extremely difficult to understand how we are able to remunerate people for the work that they do in even a limited fashion without exposing ourselves to the complexities of the employment law framework. This area of law is complex and unclear making it difficult to know the correct legal position and how we are meant to comply with the law.

For example, the distinction between an 'employee' and a 'contractor' is not entirely consistent across each regime. That is, a person who is deemed to be a 'contractor' by PAYG legislation may be deemed an 'employee' for the purposes of superannuation legislation. Moreover even if a worker is deemed to be a 'contractor' for the purposes of, eg, superannuation legislation, that may not prevent their principal (i.e. the person engaging them to work) from being caught by the relevant legislation. Compliance with obligations such as PAYG, workcover and superannuation is highly burdensome from an administrative perspective.

The law related to governing volunteers is equally confusing and if it were not for the recent NFP seminar conducted by PilchConnect, we would still be not be fully sure of our obligations. In any case, for a small volunteer run organisation, we are constantly faced with a lack of resources, which makes it a challenge to implement 'best practice' standards.

4. Fundraising

Another example of multiple and inconsistent regulation that has hampered our work, can be illustrated by the attached graph (appendix 1) that our legal advisor has prepared with respect to fundraising licensing requirements across different jurisdictions. This seems like a completely inefficient way to regulate fundraising across the country. It also remains unclear whether we are able to use our DGR status nationally absent such licenses in each jurisdiction and, on this basis, whether we are able to apply for grants based in other States.

As the graph shows, each State has unique requirements without there appearing to be any rational reason for such difference. For a small not-for-profit organisation such as ours, such a regulatory regime is difficult to understand.

In Victoria, even to hold a simple fundraiser event and raffle, we have to apply for a license pursuant to the *Fundraising Appeals Act 1998* (Vic). In Victoria, organisations that only use unpaid volunteers and derive less than \$10,000 of gross income in any (tax) year are exempt from having to register as a fundraising entity. As such, HRAFF did not have to and has not registered as a fundraiser under the *Fundraising Appeals Act 1998* (Vic) however, we may have to do this in future. We cannot understand why such an exemption for small not-for-profits does not exist each piece of equivalent interstate legislation.

Raffles are regulated by another piece of legislation, the *Gambling Regulation Act 2003* (Vic). The *Gambling Regulation Act 2003* (Vic) requires that regardless of the level, or size, or type of raffle, charitable organisations who wish to hold a raffle need to be declared as 'community or charitable organisation' by the Victorian Commission for Gambling Regulation (VCGR) before they may hold a raffle. We have been informed that we need to apply to the VCGR every 12 months, as this is the maximum length of time that such a declaration is operative for.

This complicated and confusing system only encourages non-compliance.

5. Insurance

Obtaining insurance for our organisation is quite complex as we are required to obtain volunteers insurance, workers insurance, public liability insurance, content insurance etc. This is further complicated by the fact that until recently, we did not have an office space and all of our volunteers were working from their homes. Also, we have volunteers throughout the year and different levels of volunteers: those that are part of our core committee and dedicate a substantial amount of time to the organisation, those that work ad hoc throughout the year and those that just help during the festival. Now that we operate nationally and have teams of people interstate, it is more difficult to understand how we are meant to obtain insurance for our interstate volunteers and whether this actually protects them or not given that we are a Victorian-registered incorporated association.

CONCLUSION

Our experience over the past 18 months is evidence of the difficulties not-for-profit organisations face in establishing themselves. As such, HRAFF endorses PilchConnect's (PILCH) submission to the Senate Inquiry. We echo their call for urgent reform of the area in accordance with their recommendations.

Kind Regards,

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HRAFF Directors
Human Rights Arts and Film Festival