

28 August 2008

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### **Submission to Inquiry into the disclosure regimes for charities and not-for-profit organisations**

Dear Mr Hawkins

Thank you for accepting this brief submission to the Inquiry into disclosure regimes for charities and not-for-profit organisations.

Most of my working life has been spent in the not for profit sector, either as a Board member or as Chief Executive Officer. I support simplification of legal requirements and regulation for not-for-profit entities with turnovers of less than (say) \$10million.

Not-for-profits serving the public benefit need recognised legal status plus limited liability. For many such entities the provisions of the Corporations Act can be onerous, particularly at Board level where penetration of governance education is patchy and in fairness is likely to remain so. Many not-for-profits seek to attract professionally qualified people to sit on their Boards to heighten awareness of Board member responsibilities, but while some will join companies limited by guarantee, few will join entities registered under state-based Associations Incorporation legislation as legal defences for Directors under the latter are inferior to those available under the Corporations Act.<sup>1</sup>

The April 2008 proposal from Senator Andrew Murray<sup>2</sup> provides a thoughtful road map for the future regulation of not-for-profit and small business sectors. I support the Murray proposals with just a couple of provisos: the first of which relates to financial management.

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<sup>1</sup> Jonathan Casson, Partner, Holman Webb Lawyers, 'Directors Duties', [www.associations.net.au](http://www.associations.net.au), edition 17, July 2008, p. 5

<sup>2</sup> Senator Andrew Murray, 'A proposal for simplifying the legal form and regulation of small for-profit businesses and not-for-profit entities', April 2008

Not-for-profits utilise public funds from donors, members, governments and other sources, so I believe there is a case for annual disclosure of financials utilising a simplified reporting form, both for the sake of transparency and to enhance public trust. Financials could be lodged with the (newly created) Registrar of Incorporated Associations on an annual basis and be available to the public via that website. Audited financials for entities that have charitable status and/or utilise government or other donor funds should be mandatory, as indeed should annual audits for entities that have a turnover in excess of (say) \$5million.

Additionally, while many not-for-profits may choose to continue to utilise 'public company limited by guarantee' status, those entities with turnovers in excess of \$10 million should move to registration under the corporate regulator, and new legislation will need to provide for that transition.

I have no doubt that the advent of a single specialist national regulator for the not-for-profit sector will be challenging for some states, however the public is arguably better served by one independent regulator compared with the situation we have at present.

While a Registrar of Incorporated Associations should be independent of government, I would favour having it located within the Australian Securities and Investment Commission. There seems little to be gained by distancing the small end of town from the big end of town.

The main roles for the Registrar of Incorporated Associations would be enforcement and dispute resolution, but the Registrar should also have a role in recommending focused governance education to not-for-profit directors in much the same way as is presently undertaken by the Australian Securities and Investment Commission.

Considerable work needs to be undertaken to clarify roles and responsibilities for directors. The three sectors: not-for-profit, government and for-profit are different, particularly at board level. Numbers of directors who sit on both for-profit and not-for-profit boards complain that while their roles are clear in for-profits, the same cannot be said for not-for-profits. Much current director education seeks to re-make not-for-profit and government boards in the for-profit image. A Registrar of Incorporated Associations could help address this issue, and that will be vital to instil director and supporter confidence.

In conclusion, my interest in making this submission is to promote a new regime that values transparency and can be easily understood by not-for-profits, particularly those with no staff and also those with inexperienced Board members drawn from the sector of the entity.

I support the proposal by Senator Andrew Murray<sup>3</sup> with modifications to the financial reporting and other provisos as contained in this submission.

Yours sincerely

Margaret Conley  
28 August 2008

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<sup>3</sup> ibid