

The way forward

The not-for-profit sector needs:

- a regulatory regime that is clear, fair and consistent
- a regime enforced by an adequately resourced regulator that understands the specific needs of the full range of not-for-profit organisations
- a fee scale that is graduated according to size but is also modest
- accountability that is appropriate to the needs of not-for-profit stakeholders (such as members, donors, grant makers and the general public)
- the flexibility of being able to operate and/or fundraise in other states without separate or additional regulation

We support a clear, national not-for-profit regulatory framework that will provide a foundation for stakeholder confidence in the sector

The charitable sector underscores many basic values in Australian democracy. It exemplifies the principles of pluralism, free choice and the rights of citizens to participate in and take responsibility for their community
– 1995 Industry Commission Report

A preferred model

In terms of a preferred model, we endorse the key findings of the report by Woodward & Marshall 'A Better Framework: reforming not-for-profit regulation' 2004².

A single Commonwealth statutory regime for all corporate bodies (both for-profit and not-for-profit, including incorporated associations) should be introduced.

If ASIC is to be the regulator under this single Commonwealth regime (at least until a new national not-for-profit specific regulator is created), then it needs to take steps to make itself more friendly to not-for-profit users (eg. a specialist division).

A range of modifications need to be made to existing Corporations Act requirements; in particular we would highlight the need for a plain language guide summarising the provisions/obligations relevant to not-for-profits.

A new not-for-profit specific legal structure needs to be developed drawing on the best aspects of the corporations law and the incorporated associations regimes, with consideration of the recent UK developments (community interest companies etc).

We also endorse the National Roundtable of Nonprofit Organisations Response to the Review of the Associations Incorporation Act – Interim Report (2005)³.

These recommendations need to be implemented as a package

As the Consumer Affairs Victoria Interim Report notes, the recommendations in the Woodward & Marshall Report have received wide support



About the not-for-profit sector

A significant contribution to the economy:

- Gross Domestic Product (4.7% when the value of volunteer labour is added in)
- Employment (6.8% of total employment, over 4 million volunteers)¹

Contributing to our social well-being:

In Victoria, not-for-profit organisations provide an important range of:

- social services
- education and research
- culture
- sport and recreation
- health services
- professional bodies
- a wide range of other volunteer activities

In comparative terms, not-for-profit organisations add more to GDP than the mining industry

– ABS 2002

Approximately 704.1 million hours of voluntary work is carried out by Australians annually, and the voluntary contribution equals around \$8.9 billion worth of income to the non-profit sector

– ABS 2001

Problems with a transfer to the Companies regime

- The Corporations Act was never intended to regulate not-for-profit organisations
- It is a huge piece of legislation of which only scattered and small bits relate to the particular company structure that not-for-profits use (i.e. company limited by guarantee)
- We have received legal advice that, as all companies limited by guarantee are necessarily public companies:

- they must allow proxies and cannot prevent non-Members from being appointed proxies, and thereby participating in its general meetings

- a small number of vexatious Members can requisition a general meeting whenever and as often as they like (expensive with over 40,000 Members) directors can be sacked by a simple majority at a general meeting

- We are also advised that an incorporated association cannot become a company limited by guarantee unless every Member agrees and there are no easy procedures for amalgamations
- The annual fee would be \$1,000 rather than \$35.80 because we are not a 'charity', late fees are substantial (and there are fees to obtain copies of documents)

We are deeply concerned that, if implemented, the Interim Report will create greater division and confusion in the Victorian not-for-sector sector.

Those organisations deemed to be 'large' by a state legislation will be forced to incorporate under the Corporations Act and therefore be regulated by the Commonwealth.

There will be the smaller organisations incorporated under the associations regime and regulated by the Victorian Government. Those that, over time, creep to the cusp of 'large' will be forced to change their legal status and procedures as a reward for growth.

Consumer Affairs Victoria has released an Interim Report, recommending a transfer of large not-for-profits to a Companies regime, to be regulated by the Australian Securities and Investments Commission

This fragmentation of the not-for-profit sector in Victoria will inevitably slow the impetus towards a single national structure, and distract attention from that important goal.

What is needed

- A national regulatory framework for not-for-profits
- An independent, not-for-profit specific regulatory body
- A new, specialist not-for-profit legal form

Take action now

Write to the Australian Prime Minister and your State Premier and ask them to initiate a national not-for-profit regulator



The right framework will benefit the entire sector

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The case for a national not-for-profit regime

A response to the Review of the Associations Incorporation Act – Consumer Affairs Victoria Interim Report

¹ ABS, November 2002

² See: <http://cclsr.law.unimelb.edu.au/activities/not-for-profit/finalreport/index.html>

³ See: www.philanthropy.org.au