

17 April 2008

Policy and Strategy Division
NSW Office of Fair Trading
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Dear Sirs

Exposure Draft Associations Incorporation Bill 2008

CPA Australia, The Institute of Chartered Accountants in Australia (the Institute) and the National Institute of Accountants (NIA) (collectively referred to as the Joint Accounting Bodies) welcome the opportunity to make a submission on the Exposure Draft Associations Incorporation Bill 2008 (Draft Bill).

The Joint Accounting Bodies represent over 180,000 professional accountants. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally. The Joint Accounting Bodies have together considered the Draft Bill and our comments are set out below and in the attached Appendix.

Our members are involved in associations as members as well as treasurers and auditors, both paid and voluntary, and not-for-profit reporting is an area that concerns them greatly. In 2007, the Joint Accounting Bodies responded to the Treasury's discussion paper on unlisted public companies (please refer to CPA Australia's link: http://www.cpaaustralia.com.au/cps/rde/xchg/SID-3F57FECB-65397AE6/cpa/hs.xml/14131_23992_ENA_HTML.htm; or the Institute's link: http://www.charteredaccountants.com.au/A119702265?z_d=lsk) and to the Victorian State Services Authority on not-for-profit regulation (<http://www.charteredaccountants.com.au/files/documents/ICAA07-SSASubmission042707.pdf>). A recurring theme in these submissions is the need for Australian governments to reduce the burden of compliance without removing the requirement for accountability and to act together to draft legislation and regulations that are consistent across the country as increasingly associations are crossing State boundaries. In our view, NSW Government resources would be better spent working with other State and Federal Governments, through the Council of Australian Governments (COAG), to produce a uniform national scheme that embraces the whole not for profit sector, whether the activities be conducted through companies limited by guarantee or through associations.

The Joint Accounting Bodies' detailed comments are in the attached appendix. The comments are generally confined to the financial reporting and assurance aspects of the Bill as they represent our area of expertise.

If you require further information on any of our views, please contact John Ngiam (CPA Australia) by email to john.ngiam@cpaustralia.com.au, Kerry Hicks (the Institute) by email to kerry.hicks@charteredaccountants.com.au or Tom Ravlic (NIA) by email to tom.ravlic@nia.org.au.

Yours faithfully



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cc.

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Representatives of the Australian Accounting Profession

Detailed Comments

One Law

As mentioned in our covering letter, the Joint Accounting Bodies have stated in previous submissions to State and Commonwealth governments that it is difficult to reconcile the different legislative requirements across jurisdictions for equivalent sized entities which conduct similar activities. Entities such as incorporated associations are subject to the legislation of the State or Territory, while public companies limited by guarantee are subject to federal legislation. In some cases associations may operate across State boundaries. Consequently, we encourage the Government of NSW and other State governments to work with the Commonwealth government to develop a consistent approach for reporting purposes, including the examination of a single federal statutory regime for all corporate bodies by referral of powers from the States and Territories to the Commonwealth government and national regulators.

Some commentators have gone so far as to suggest that Australia needs a single Commonwealth regulatory regime for not-for-profits.¹ A single scheme could then be tied in with the Commonwealth Treasury's proposals to reduce the regulatory burden on small companies limited by guarantee using thresholds to be agreed. Other commentators have told us that they recommend to some not-for-profits that they should incorporate as a company limited by guarantee rather than an association as the underlying law is better known and easier to follow and does not differ from State to State.

In the event that the NSW Government proceeds with finalising this legislation in isolation from the other State and Commonwealth governments, the following detailed comments identify areas that should be considered as part of this process.

Financial Reporting Requirements

The term 'financial statements' used in Part 5 of the Draft Bill is not defined. This could lead to confusion. If it is the NSW government's intention that the definition in the Corporations Act should be used then it should be stated. We suggest using the definition in the Accounting Professional and Ethical Standards Board's APES 205 *Conformity with Accounting Standards*:

"Financial Statements means a structured representation of historical financial information, which ordinarily includes explanatory notes, intended to communicate an entity's economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework. The term can refer to a complete set of Financial Statements, but it can also refer to a single financial statement, for example, a balance sheet, or a statement of revenues and expenses, and related explanatory notes. The requirements of the financial reporting framework determine the form and content of the Financial Statements and what constitutes a complete set of Financial Statements."

Exactly what is required of each tier of association (the appropriate framework, per the definition) can then be specified in Regulations.

Section 49 requires that the financial statements of a small association must give a true and fair view. This is a company law concept, which brings in by implication the application of accrual accounting and possibly also extends to the application of all the accounting standards, particularly if the Australian Accounting Standards Board (AASB) should proceed with their proposals in ITC 12 *Request for Comment on a Proposed Revised Differential Reporting Regime for Australia and IASB Exposure Draft of A Proposed IFRS for Small and Medium-sized Entities*. The legislators need to be clear on what is required. The Joint Accounting Bodies believe that the Department is intending that small associations should be able to choose to prepare simple financial reports for their members, in some cases only a cash-based statement of income and expenditure. It would be helpful for users of the legislation for the Department of Fair Trading to specify exactly what is required for small associations in the Regulations. We suggest that the Department give a

¹ "A Better Framework: Reforming not-for-profit regulation" by Susan Woodward and Shelley Marshall, University of Melbourne, 2004 <http://cclsr.law.unimelb.edu.au/index.cfm?objectId=017B1CA1-B0D0-AB80-E29B8B41F029F841>

small association the option to produce a simple Statement of Key Financial Data derived from information prepared on an accrual basis and signed by two members of the Association's management committee. The Joint Accounting Bodies would be pleased to assist in drafting the appropriate wording.

Section 52 requires a large association to keep records which are sufficient to enable financial statements to be prepared in accordance with Australian Accounting Standards. The Joint Accounting Bodies suggest that this requirement should apply to all associations, as all associations have accountability obligations. Preparation of financial statements of some sort for small associations, which may eventually grow to become large associations, fulfils those obligations. If the *International Financial Reporting Standards for the Small and Medium-sized Entities* were to be adopted by the AASB, the accountability requirements for associations may also change resulting from the stipulated benchmarks. Consequently, financial records should be sufficient for all associations to provide an accounting and audit trail.

Audit and/or Assurance Requirements

The Joint Accounting Bodies are of the view that the requirements of section 54 relating to the qualifications of the auditor are more stringent than necessary. The Joint Accounting Bodies also share the view that it should be adequate for the auditor to be a member of one of the three accounting bodies holding a public practising certificate. Many practising members have had adequate audit experience over their careers to be able to conduct a small audit, but, because they have not worked exclusively in audit for a significant period of time, do not qualify for registration as a Registered Company Auditor. Reducing the stringency of this requirement will enable associations to have a greater choice of possible auditors without compromising audit quality and will make it easier for associations in regional areas to secure the services of a qualified auditor. CPA Australia also made this suggestion in its submission to the Victorian government in relation to the Victorian associations' legislation.

It should be noted that members of the Joint Accounting Bodies are subject to the ethical requirements of the Accounting Professional and Ethical Standards Board, which cover audit independence.

The requirement in section 54 that the auditor shall not be a member of the association may also be excessive, particularly where an association is large and the proposed auditor is not involved in its management. A better way of drafting the requirement would be to state that the auditor must be independent in terms of APES 110 *Code of Ethics for Professional Accountants*. APES 110 emphasises the threats to independence and the appropriate safeguards that can be put in place to mitigate those threats, which leaves scope for professional judgement.

The Financial Year

The Joint Accounting Bodies strenuously disagree with these proposals and see absolutely no reason why associations should be forced to adopt a year-end of 30 June or 31 December.

In our experience associations have a variety of year-ends. Generally the year-end is chosen because it fits well with the association's activities. For example a sporting club will have its year-end just after the end of its sporting season, for example 30 September for a winter sport. A school parents' association may choose to have its year-end at the end of October or November after its major fund-raisers for the year and in time to hand over to a new committee who will then plan activities for the next academic year. Other associations may run one major event during the year, such as a regional agricultural show. They choose to have their year-end just after the completion of the major event.

Changing to compulsory year-ends would be highly inconvenient for the associations, volunteers who assist them and also for their professional advisers. Accounting firms appreciate clients with non-standard year-ends as this assists with managing their flow of work. If associations are forced to have 30 June or 31 December year-ends, they will be competing for professional (and volunteer) resources with the for-profit sector, and in all likelihood, their fees will increase to reflect the increased demands on professional practices.

Other Issues

1. The Joint Accounting Bodies question the need to change the terminology from “Rules” to “Constitution” as those involved in associations seem to be comfortable with the current terminology.
2. The Joint Accounting Bodies question the need to combine the roles of Secretary and Public Officer. Under the current legislation, associations can combine these roles if they wish, but they can also use the existence of two designated positions as a means of recruiting an extra volunteer onto the committee.