

Ms Amanda Powell
Research Director
Legal Affairs, Police, Corrective Services and Emergency Services Committee
Parliament House
George Street
Brisbane Qld 4000

17 October 2011

Dear Ms Powell,

RE: Civil Proceedings Bill 2011

We welcome the opportunity to make this submission to the Legal Affairs, Police, Corrective Services and Emergency Services Committee Inquiry into the proposed Civil Proceedings Bill. We advise that our particular area of interest in this Bill is in relation to the proposed amendments to the *Associations Incorporation Act 1981* (Qld.)

The proposed amendments allow for the transfer of the legal form of an organisation from that of an incorporated association or RECI corporation (that is one which is established by Letters Patent) to a company limited by guarantee without the need to wind up the association or RECI corporation and distribute assets. We fully support the introduction of these provisions and commend the Attorney-General and the Government for understanding the importance of having available a simpler method of migration from one legal structure to another.

At present there are barriers to associations changing their legal form even though the legal structure of a company limited by guarantee may be better suited to the operations and size of the organisation. These provisions once enacted will give Not-For-Profits in Queensland a realistic choice about the most appropriate legal structure for their organisation and therefore deserve support. We further note that these provisions also meet the recommendation of the Productivity Commission Research Report *Contribution of the Not-For-Profit Sector* (2010) in this respect:

Recommendation 6.2

Reduce compliance costs and improve effectiveness

Australian governments should, through the Council of Australian Governments Business Regulation and Competition Working Group, pursue harmonisation of state and territory based incorporated associations legislation, with an initial focus on:

- *aligning not-for-profit organisations' public corporate and financial reporting requirements*
- *rules on the distribution of assets on the dissolution or restructuring of a not-for-profit organisation*
- ***allowing not-for-profit organisations to migrate from one legal form to another and to move to the Commonwealth jurisdiction without onerous transaction costs.***

However we do note in respect of some RECI corporations the requirement to lodge a copy of the special resolution to transfer may prove difficult due to their structure and lack of constitutional provisions. In these circumstances it may be preferable to either allow for Ministerial approval to the change of legal structure rather than requiring a special resolution or alternatively extend the provisions of section 132 of the *Associations Incorporation Act 1981* to cover migration to a company limited by guarantee. Section 132 of the *Associations Incorporation Act 1981* allows in certain circumstances for a regulation to exempt RECI corporations from specified provisions of the Act.

Further we believe that the full benefit of the proposed amendments to the *Associations Incorporation Act 1981* may not be realised if the sector does not appreciate the effect of the Bill, given the technical nature of migration provisions. In our view the best way to achieve the goal of the proposed amendments would be a coordinated education and information strategy undertaken jointly by ASIC and the Queensland Office of Fair Trading.

Should you require any further information please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Myles', written in a cursive style.

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