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By email: ASICFunding@treasury.gov.au

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ASIC Industry Funding Model and Registry Search Fees

Thank you for the opportunity to provide feedback on the draft regulations and explanatory material for the Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019 (**the Regulations**).

Our expertise

Not-for-profit Law is a specialist service of Justice Connect which is an ACNC registered charity and accredited community legal centre. The Not-for-profit Law team is comprised of experienced charity lawyers (who also have firsthand experience of volunteering for a range of not-for-profits). We provide free and low cost legal advice to not-for-profit organisations across Australia. On an annual basis, we respond to more than 1,600 legal enquiries, train more than 3,000 people and our website (www.nfplaw.org.au with over 350 free legal resources) has more than 460,000 visits annually.

We advocate for an improved legal and regulatory framework for the not-for-profit sector, and for law reform that takes account of the impacts (and costs) of regulation on not-for-profits.

Our recommendations

We provide comments only to the extent the Regulations relate to charities and other not-for-profit companies. We have two recommendations:

- 1. We support the proposed reduction of fees to \$40 for an 'application for consent to resign as an auditor of a specific company' (regulation 82A).**
- 2. We submit that the fee for an 'application for extension of time to hold annual general meetings' (regulation s250P) should be reduced to \$40 for companies limited by guarantee.**

Why we make these recommendations

Increasingly not-for-profit organisations choose to incorporate under the Corporations Act 2001 (Cth) – they want to be able to operate nationally, as they can do via a website even though they are very small. The overwhelming majority of these chose the company limited by guarantee (CLG) form (over any other ASIC regulated company from).

We submit that, in terms of fees (particularly for relatively common transactions), CLGs should be treated in line with other not-for-profit legal structures.

In comparison to the ASIC fee of \$3,487 for CLGs (not registered charities with the Australian Charities and Not-for-profits Commission, **ACNC**), state-based incorporated associations pay less than \$40 for an application to extend time to hold an annual general meeting (**AGM**) – Victoria \$36.10 and New South Wales \$33, for example.

While all charities must operate as a not-for-profit organisations, not all not-for-profits will be charities (and therefore eligible to register with the ACNC). This means this significant fee difference (over \$3,400) will apply to many very small not-for-profits, such as sporting groups and peak bodies. From our experience of assisting many small groups, this disproportionate fee will:

- discourage (non ACNC registered) not-for-profits from using the CLG structure as it is seen as heavy handed on fees for routine matters
- discourage small groups from ‘doing the right thing’ and seeking approval for extending the time for their annual general meeting
- sapping the very limited financial resources of many not-for-profit CLGs for what is likely a be a small and unavoidable need for an extension (for example, the Treasurer of the small rural sporting club is in hospital and they need an extra two weeks to convene the annual general meeting of their local membership base of 20 people).

From enquiries and comments received through our legal advice service we know that many not-for-profit organisations struggle to meet quorum requirements at AGMs, and therefore may need to seek an extension of time for their AGM. A return of the fee to its pre-1 July 2018 level will reduce the stress often experienced by organisations in the lead up to their AGM, and allow those funds to be put to furthering their not-for-profit purpose and activities.

We therefore urge reconsideration of this AGM fee in keeping with the sensible approach now being taken with regard to the resignation of the auditor, particularly given this fee was \$39 up to 30 June 2018 for CLGs.

Yours sincerely,

A handwritten signature in blue ink that reads "Sue Woodward".

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