

Monday, 17 January 2022

Registration Analyst
Australian Charities and Not-for-profits Commission
By Email only: registration@acnc.gov.au

Dear [REDACTED],

Re: The Right Lane Foundation Ltd – CRM :002590000291

We refer to the emails from your office dated 12 January 2022 and 14 January 2022 in respect of The Right Lane Foundation Ltd's (ABN 84 654 290 678) (the **Applicant**) application for registration as a charity (**Application**) pursuant to the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (the **ACNC Act**).

In particular, you have requested that we advise of the approach that the Applicant will be taking in relation to the shares in Right Lane Consulting Pty Ltd held by the current directors of the Applicant.

We confirm that this issue was the topic of telephone conversations between the writer and [REDACTED] of your office on 22 December 2021 whereby [REDACTED] advised that the ACNC would not approve the Application if any current or former directors of the Applicant (or their related persons/entities) continued to hold shares in Right Lane Consulting Pty Ltd.

We confirm that, during those conversations, we advised [REDACTED] that, prior to the ACNC finalising the Application, the Applicant would ensure that the following would occur:

- One of the current directors of the Applicant, [REDACTED], would divest herself of all shares held in Right Lane Consulting Pty Ltd;
- The other two current directors of the Applicant ([REDACTED]) would resign as directors of the Applicant, but retain shares in Right Lane Consulting Pty Ltd;
- Two persons would be appointed as new directors of the Applicant, neither of whom are shareholders of Right Lane Consulting Pty Ltd; and
- The Applicant would amend its Constitution to contain a prohibition whereby, for so long as the Applicant remains a registered charity with the ACNC, a person may not be a director of the Applicant if they, or any related person, directly or indirectly holds any shares in Right Lane Consulting Pty Ltd.

Notwithstanding the above, [REDACTED] advised that the ACNC would not approve the Application if [REDACTED] and [REDACTED] retained any shares in Right Lane Consulting Pty Ltd. [REDACTED] advised that the basis for this position was that the ACNC was not willing to permit any "founder" of a registered charity to benefit from such registration.

We confirm that we expressed to [REDACTED] that, with respect, both we and our client found this to be a somewhat puzzling position for the ACNC to adopt given the following:

- a) The two directors of the Applicant who would retain shares in Right Lane Consulting Pty Ltd would not be directors of the Applicant upon any of the following occurrences:
 - the Applicant being registered as a charity by the ACNC;
 - the Applicant acquiring shares in Right Lane Consulting Pty Ltd; nor

- the Applicant engaging Right Lane Consulting Pty Ltd to provide consulting services to charitable organisations on behalf of the Applicant;
- b) These two “former” directors of the Applicant would not receive any direct or indirect benefit from either the Applicant being registered as a charity by the ACNC nor by way of having been directors of the Applicant for a very brief period of time between incorporation of the Applicant and the date upon which they would resign *prior to* the ACNC approving the Application (and during a period that the Applicant had yet to commence operating). We respectfully submit that these two directors ought not to be considered as “founders” of the Applicant on the basis that they were directors for a very brief period of time prior to the Applicant commencing operations and becoming a registered charity; and
- c) We queried the reasoning for declining to approve the Application on the basis that *former directors* (rather than current directors) would remain shareholders of Right Lane Consulting Pty Ltd in circumstances where these former directors will have no power to influence the decision-making of the Applicant at any time whilst it is registered as a charity (given that they will have ceased to be directors of the Applicant *prior to* the date upon which the ACNC would otherwise approve the Application).

From our previous correspondence with [REDACTED] regarding the Application, we understood that the ACNC’s key concern was to ensure that, upon the ACNC approving the Application, no director of the Applicant may be a shareholder of Right Lane Consulting Pty Ltd so that there can be no actual or perceived conflict of interest applying to the directors of the Applicant at any time whilst the Applicant is a registered charity.

In this regard, we respectfully query upon what basis there can be said to be any actual or perceived conflict of interest if a *former* director of the Applicant retains shares in Right Lane Consulting Pty Ltd, a company which the Applicant will make payments to in the *future* (at a time that no directors of the Applicant are a shareholder) for *future* consulting services to be provided by that company to charitable organisations on behalf of the Applicant?

In our respectful submission, by resigning as directors of the Applicant prior to the Applicant becoming a registered charity, prior to the Applicant acquiring shares in Right Lane Consulting Pty Ltd and prior to the Applicant engaging Right Lane Consulting Pty Ltd to provide consulting services to charitable organisations on behalf of the Applicant, both [REDACTED] will have taken all necessary and appropriate action to comply with their duty (as company directors and under the ACNC Act) to avoid a conflict of interest.

Likewise, by amending its Constitution to contain a prohibition on any person being a director of the Applicant if they, or any related person, directly or indirectly holds any shares in Right Lane Consulting Pty Ltd, we submit that the Applicant will also have taken all appropriate action to avoid any such actual or perceived conflict of interest.

In our respectful submission, we suggest the above approach is a more appropriate structure to be adopted in order to alleviate the ACNC’s conflict of interest concerns than the ACNC’s current proposal that the two relevant persons remain as directors of the Applicant but divest themselves of their shares in Right Lane Consulting Pty Ltd by transferring same to the Applicant.

The ACNC’s position in this regard inevitably raises the following queries:

1. Would the ACNC have approved the Application if, as at the date of lodging the Application, none of the directors of the Applicant were shareholders of Right Lane Consulting Pty Ltd?

If this is the case, we respectfully query what the basis is for now declining to approve the Application if the Applicant ensures that, as at the date upon which the ACNC approves the Application, none of the directors of the Applicant are shareholders of Right Lane Consulting Pty Ltd?

2. Would the ACNC approve a fresh application based on the same structure as the current Application but with the applicable applicant being a newly formed public company limited by guarantee of which none of the directors are a shareholder of Right Lane Consulting Pty Ltd?

If the answer to this question is yes, then in our respectful submission this will simply be a more costly manner in which to achieve the same outcome as we have proposed above whereby, upon the date that the ACNC approves the Application, none of the directors of the Applicant will be, nor will they be permitted to be, shareholders of Right Lane Consulting Pty Ltd.

The Applicant would be grateful for your responses to the above queries in order to enable it confirm the approach it will be taking in relation to the current directors' shareholdings in Right Lane Consulting Pty Ltd.

In this regard, we would be grateful if you could please confirm that the ACNC will keep the Application active and on foot whilst the above items remain unresolved.

The writer, Adam Rich, would be happy to discuss the above matters. Otherwise, we look forward to your responses in due course and thank you for your ongoing assistance with respect to the Applicant's Application.

Yours faithfully

WISEWOULD MAHONY

A handwritten signature in black ink, appearing to be 'Adam Rich', with a long horizontal stroke extending to the right.

Adam Rich – Partner
Direct line: 03 9612 7229