

Committee Secretary
Department of the Senate

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Dear Committee

Charity Fundraising in the 21st Century

We refer to the terms of reference for the review of the *Fundraising Regulation for Charities - Charity Fundraising in the 21st Century*.

Saward Dawson is a Chartered Accounting firm that embraces serving the Not-for-profit sector and in particular charities as part of our core values. We work with hundreds of these entities each year providing accounting, assurance, taxation and other advisory services.

We actively represent the sector through various channels including our involvement with and input into the Chartered Accountants Australia and New Zealand (CA ANZ) not-for-profit group, the Australian Accounting Standards Board, the Australian Audit Standards Board and the Australian Charities and Not-For-profits Commission Professional Advisers Group.

We work with many of the regulators and standard setters to provide insight in relation to the impact of the various requirements and associated changes have on the charity and broader not-for-profit sector. Our interest is to ensure that compliance obligations represent proportionate and relevant regulation; a balance between the need to protect public interest and the diversion of resources away from charitable activities.

Many charities we work with would conclude that the right balance is rarely achieved - with the weighting toward the ever-increasing compliance obligations. The regulation of fundraising is clearly one of the key areas where the requirements are disproportionate to the public benefit.

Our comments and recommendations regarding the review are provided in this submission.

Please do not hesitate to contact us should you wish to discuss further any matters arising from this submission.

Yours Sincerely

Peter Shields
Partner

Specific Comments

	Terms of reference	Response
a.	Whether the current framework of fundraising regulation creates unnecessary problems for charities and organisations who rely on donations from Australian supporters;	<p>The current framework of fundraising regulation certainly creates unnecessary red tape, being the diversion of charitable resources toward compliance with an unnecessarily complex and divergent set of requirements.</p> <ul style="list-style-type: none"> • The compliance obligations are inconsistent across the various states and territories • definitions and reporting obligations are inconsistent • a number of the requirements are impractical and outdated • the requirements are disproportionate to the particular fundraising efforts of most small and medium charities • the requirement to register in each state when a charity's website invites donations is impractical • the regulations do not address the primary risks and public frustrations with associated with fundraising activity • the system largely relies on self-regulation and as such only the most compliant organisations (that need the least regulation) achieve full compliance <p>As such, the current framework fundraising regulation adds to a significant red tape burden for charities and ultimately donors, as it diverts funds away from charitable activity for what is perceived to be little benefit.</p>
b.	Whether current fundraising laws meet the objectives that guided the decision to regulate donations;	The current fundraising laws were designed to protect the interests of the public from unscrupulous, unethical and misleading fundraising activities. It is our opinion that the laws have limited impact on these objectives.
c.	Whether current fundraising compliance regimes allow charities to cultivate donor activity and make optimal use of resources donors provide;	We believe donors, for the most part, base their willingness to donate to a particular organisation based on predetermined level of trust rather than the fundraising compliance regime.
d.	The loss in productivity for the thousands of charities who try to meet the requirements of the seven different fundraising regimes;	The redirection of funds towards compliance obligations that are disproportionate or even irrelevant to the activities being undertaken, comes at a direct costs to funds being expended on charitable purpose.

	Terms of reference	Response
e.	Whether the current frameworks for investigation and enforcement are the best model for the contemporary fundraising environment;	To our knowledge, information on the investigation and enforcement of the existing frameworks is rarely made available publicly. As such, we cannot provide a specific comment.
f.	How Federal, State and Territory Governments could work together to provide charities with a nationally-consistent, contemporary and fit-for-purpose fundraising regime;	<p>There would seem no logical argument for divergent regulation based on geographic location within Australia. Possible options would include:</p> <ul style="list-style-type: none"> • identical state requirements with the requirement to only register in the State/Territory where charity conducts its principal activities • Federal legislation covering locations with one registration requirement • either option above with registration requirements for not-for-profit entities: charities only requiring registration with the ACNC.
g.	The appropriate donor-focused expectations and requirements that should govern fundraising regulation in the 21st century;	With increasing fraudulent and scam activities taking advantage of individuals' goodwill and trust we believe it is critical to have a single point of reference/registration that individuals can utilise to verify the legitimacy of the fundraiser in a timely manner.
h.	How the Australian consumer law should apply to not-for-profit fundraising activities;	We refer to the ACNC submission and their commentary on this matter.
i.	What are the best mechanisms to regulate third party fundraisers and to ensure the culture of third party fundraisers matches community perceptions of the clients they work with;	Transparency - Disclosure of the percentage of commission or fees received by the organisation - at the time of donation to enable the donor to determine whether they wish to give via the fundraiser or directly to the organisation
j.	Whether a harmonised, contemporary fundraising regime could help in addressing concerns about the potential influence of foreign money on civil society and political debate in Australia;	This outcome would be dependent on what the harmonised contemporary fundraising regime requires, however, we would believe this objective would be difficult to achieve through the use of fundraising compliance measures.

	Terms of reference	Response
k.	The cost to the charity and not-for-profit sector, and the communities they serve, of postponing fundraising reform; and	Significant
l.	Any other related matters.	Restrictions on directly approaching individuals on the street Disclosure of how private information will be used/protected

Our specific comments in this section are made with reference to the current objects of the ACNC being:

- (a) to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- (b) to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- (c) to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

We note the recommendations by the ACNC to this review, recommending two additional objects regarding 'promoting the effective use of resources' and 'to enhance accountability'. We have also considered these potential objects in our comments.

In addition we have referenced the relevant recommendations by the ACNC where we have relevant experience with regard to the matters raised.

1. Charity revocation

ACNC recommendation 11. We believe that publishing the grounds for the decision to revoke charity status will provide clarity over the issues to responsible persons of other charities, service providers and other stakeholders including donors. Accordingly we support this recommendation as it will protect and enhance public trust and confidence.

2. ASIC registers

ACNC recommendation 16. The inability to check the names of directors and company secretaries on ASIC registers causes issues for charities financing arrangements and other legal matters. We recommend that ASIC registers for charities be either turned off and searches referred back to the ACNC register or ASIC details be updated via data transfer from the ACNC. We believe this will result in a reduction of unnecessary regulatory obligations.

3. Auditor appointment

ACNC recommendation 19. We believe the auditor appointment and change of auditor requirements should be transferred from ASIC to the ACNC and the process be simplified. The current ASIC requirements are overly onerous and complex, resulting in significant time and cost to charities seeking to change auditor. A simple requirement to include the auditor in the charity details (similar to a responsible person) and a reporting safeguard for the auditor being removed requiring them to report to the ACNC where they believe their removal may result in non-compliance with the ACNC Act, will result in the reduction of unnecessary regulatory obligations and develop consistency as non-corporate entities change of auditor processes.

4. Reporting Framework for Charities

ACNC recommendation 21. Although we support the overall recommendation in the ACNC submission we believe more immediate actions should be taken.

We refer to the findings in the July 2015 ACNC publication "Lessons on Reporting to the Australian Charities and Not-for-profits Commission". We believe that the transitional reporting arrangement adopted by the ACNC in particular in relation to the acceptance of financial reporting and audit requirements of State and Territory regulators is a major contributor to issues identified in this report.

Consistent with the findings of this report, we regularly identify financial reports on the ACNC website are clearly non-compliant with the ACNC requirements of including a statement of profit or loss and other comprehensive income, statement of financial position, statement of changes in equity, statement of cash flows and notes to the financial statements.

In addition many do not comply with the minimum 6 accounting standards. In our view, the recent extension of the transitional provisions (and any future extension) further undermines the ACNC object to maintain, protect and enhance public trust and confidence and does not align with the additional two objects recommended by the ACNC.

Clearly the ACNC does not have the resources to monitor all financial report lodgments. However suitably qualified and competent assurance providers that are subject to regulation and professional development requirements are often the catalyst for improving reporting and compliance requirements. Accordingly, we strongly believe that current legislative requirements that large charities be audited by RCA's should be enforced and the ACNC should publically state that no further extension of transitional provisions will occur. This will allow charities time to plan in order meet these requirements.

In addition the current requirement to comply with the minimum 6 accounting standards, results in less disclosures for entities preparing general purpose – reduced disclosure regime financial reports than technically those preparing special purpose financial reports. We believe the guidance should therefore state the requirement to comply with the minimum 6 accounting standards to the extent required under the reduced disclosure regime.

5. Sections 60-30 – audit or review

ACNC recommendation 25. We disagree with the ACNC submission. We are not aware of any circumstance where the requirement for audit will impose unreasonable burden on the charity. In our experience the audit environment within Australia remains highly competitive and audit fees are generally around or less than 1% of revenue for a large charity.

We also believe the assertion that remote of regional charities are unable to source an RCA does not align with our experience or practice. Increasingly through the use of technology and the electronic document storage of current accounting systems, the need for travel to perform an audit can be significantly reduced or eliminated and thereby result in the location of the charity being largely irrelevant.

6. Audit or review report legislative compliance

ACNC recommendation 26. We support the overall recommendation in the ACNC submission regarding inclusion of 'material'.

7. Framework for Financial Reporting

ACNC recommendation 28. We support the overall recommendation in the ACNC submission requiring compliance with AASB124 Related Party Disclosures.

However we draw your attention to our comments above regarding the transitional provisions where entities don't and are not required to comply with the current requirements.

We would note that the potential removal of special purpose has significant implications for many charities. In particular the requirement for consolidation where 'controlled entities' have different purposes is a matter for debate. Concerns have also been expressed over the increasing complexity of certain accounting standards, for examples AASB 16 leases, the appropriateness of certain disclosure requirements and the future of the reduced disclosure regime.

We believe that the ACNC should consult and determine an appropriate level of compliance with regard to both recognition and measurement and disclosure requirements under the current accounting standards as the ACNC recommendation 21 regarding developing a suitable framework for financial reporting will likely be a long term endeavour.