



**FUNDRAISING INSTITUTE AUSTRALIA
SUBMISSIONS IN RESPONSE TO RECOMMENDATIONS
OF PRODUCTIVITY COMMISSION DRAFT RESEARCH REPORT –
CONTRIBUTION OF THE NOT-FOR-PROFIT SECTOR (October 2009)**

Fundraising Institute Australia (FIA) endorses the recommendations of the Productivity Commission, and expresses the view that the recommendations are both progressive and helpful for charities to improve their administration while prioritising their missions.

FIA comments on the issues in which the Productivity Commission has specifically invited comment as follows.

**Draft recommendation 6.1
Providing for appropriate legal forms**

Whether there is a need for a new legal form for small unincorporated associations, similar to the Australian Business Name registration, providing limited legal rights.

FIA notes that the Australian Business Name registration via Australian Business Registry is for the primary purpose of managing the GST scheme, rather than identifying businesses, and does not provide legal rights. Therefore, it is not an appropriate means for identification of small unincorporated associations.

FIA is of the view that small unincorporated associations do not need to be formalised, as their form is sufficiently covered by common law and existing laws of association. Small unincorporated associations generally do not handle large sums of money or carry out extensive activities and their members tend to prefer informal organisation for these reasons. The majority of not-for-profit organisations are small and their activities, including fundraising, pose little risk to public confidence in accountability. The need is for streamlined regulation of medium to large organisations to facilitate their fundraising activities while maintaining public confidence in their accountability.

Whether state/territory based incorporation of associations should be restricted to not-for-profits with income less than \$150,000 per annum.

The suggested limit of \$150,000 for State only registration is appropriate, as it concurs with the GST reporting limit for not-for-profit associations.

How governments can free up the ability of organisations to migrate between legal forms and jurisdictions, while guarding against any undesirable consequences from forum shopping.

At State/Territory level, there is little for an organisation to gain from forum shopping, nor is it usually possible to do, for the reason that if an organisation is based in a particular State/Territory, it must be registered in that State/Territory.

As the Commission has acknowledged, the issue really refers to organisations which work across State/Territory borders. With State/Territory registration, this means they must register in each State/Territory in which they operate as a separate entity, which means increased costs in administration, reporting and registration fees. The only way at present in which an organisation can register on a national basis is as a public company limited by guarantee, which involves complex and costly reporting requirements, such as the need for an independent audit to be conducted annually, regardless of the income generated. Any surplus is distributed to members on winding up, which may not be in the best interests of the organisation. The usual entity of a private company is not suitable for not-for-profit organisations, as it requires the company to be responsible only to its shareholders, which conflicts with the mission of a not-for-profit organisation to carry out some purpose for the benefit of the wider community.

A Commonwealth legal structure for not-for-profit organisations would enable organisations to operate nationally without the need to replicate reporting and administration.

Draft recommendation 6.2

Promote confidence in the not-for-profit sector and reduce regulatory burden

To promote confidence in the not-for-profit sector and reduce regulatory burden, Australian governments, initially through the COAG Business Regulation and Competition Working Group, should:

- *Agree to and implement harmonised fundraising regulation and mutual recognition across Australia;*
- *Support the development of a fundraising register for cross jurisdictional fundraising organisations, to be administered by the proposed national Registrar;*
- *Endorse the adoption by all governments of the Standard Chart of Accounts for reporting by not-for-profits in receipt of government grants or service contracts;*
- *Ensure that the Standard Business Reporting initiative be expanded to include reporting requirements by not-for-profits.*

FIA has long advocated these measures, in particular harmonisation of fundraising legislation and adoption of standardised accounting practices. There is an urgent need to reduce the regulatory burden for fundraisers, which suffer from the present lack of harmonisation, making national campaigns more expensive and less efficient. Regulation shows scant attention to being proportional to risk. Realistically, the compliance and administrative burden should be reduced for SMEs, the majority of not-for-profit organisations being small and their fundraising posing little risk to public confidence in accountability for their gifts. A new national framework could regulate fundraising of medium to large not-for-profit organisations in their fundraising activities.

While current state government regulation manages financial risk (although not for the significant number of organisations exempt from state regulation), there is no overarching national compliance to protect reputational risk among the not-for-profit organisations. Industry regulation establishes reporting standards and monitors accountability and transparency of fundraising practices, enhancing ethical practice and professional standards alongside a legislative framework. FIA has taken the lead on a national level in developing standards of fundraising practice which cover both ethical and practical requirements in all areas of modern fundraising practice. FIA members must comply with

the FIA Principles and Standards of Fundraising Practice as a condition of their membership of FIA. Compliance is monitored and when required, enforced, by FIA's Ethics Committee, which is drawn from senior members of FIA, and reports to FIA's Board.

FIA believes that an important first step in meeting the challenge of drafting harmonising legislation is engaging with State and Commonwealth governments and other relevant stakeholders. Public sector support is a critical factor in the growth of the not-for-profit sector, particularly where governments provide funds for private charities to administer and distribute funding (Salamon and Anheir, 1999, *The emerging sector revisited*, Baltimore, Centre for Civil Society Studies, Institute for Policy Studies, Johns Hopkins University)

FIA supports the work of Queensland University of Technology in relation to developing a Standard Chart of Accounts for not-for-profit organisations. FIA also notes that CPA Australia also endorses a standardised method of accounting for not-for-profit organisations, as set out in its report, *Financial Reporting by not-for-profit entities*, 2000. Notwithstanding the work already done and the cross-industry support, no standard of accounting for not-for-profit organisations has been adopted. FIA is of the view that without national government support, adoption of a standard will be unlikely because of the difficulty in achieving compliance, given the multiplicity of State/Territory compliance regimes.

Draft recommendation 6.4

Establishment of Registrar for Community and Charitable Purpose Organisations

Whether the proposed national Registrar be a separate agency under the Financial Management and Accountability Act 1997, or whether it should be an additional function and separate division of the Australian Securities and Investment Commission.

FIA recommends that the Productivity Commission give regard to the recommendations in the Senate Economics Committee Inquiry - *Disclosure regimes for charities and not-for-profit organisations* (September 2008). The Senate Inquiry raised the need for regulatory reform of the sector. Organisations exhaust valuable resources complying with the onerous and conflicting legislation governing not-for-profit organisations in each State and Territory. As there have been a number of inquiries into regulation of charities at both State and Commonwealth level, it is crucial that if a regulator is established, it provides overarching regulation as a single regulator, rather than the replication of numerous, repetitive and often onerous regulation regimes as is presently the case.

The key issues raised by the Senate Inquiry are:

- Multiple reporting requirements and disclosure regimes (Commonwealth, State, Territory, local);
- Significant regulatory burden;
- Exemptions which mean that not-for-profit organisations are differently regulated;
- Lack of recognition for diversity across the sector (regulation is not proportional to risk);

- Current disclosure regimes attempts to measure efficiency (despite the lack of a national accounting standard) rather than effectiveness of charitable and not-for-profit activities.

FIA members support the establishment of a regulator which addresses these issues, with an aim to achieving the following goals:

- enabling the work of the fundraising industry by means of light-touch regulation; and
- closing the gap between statutory and self-regulation.

While there would be economy and convenience to the Commonwealth in utilising the existing structure of ASIC as a regulator, FIA submits that ASIC would not be an appropriate regulator, as the needs of charities and not-for-profit organisations are not aligned with the needs of for profit corporations. ASIC's duty is to ensure compliance with the Corporations Act 2001, an act which does not apply to not-for-profit organisations. As an example of the difficulties that can be caused by trying to fit not-for-profit organisations into a corporate regime, the reporting and compliance regime imposed by ASIC on companies limited by guarantee is exceptionally onerous given the reporting requirements for incorporated associations at State/Territory level. Companies limited by guarantee comprise only 1% of all corporations, and are established by their members as not-for-profit organisations, but are treated as if they were profit making ventures for the purpose of governance. A separate regulator for charities and not-for-profit organisations, similar to the Charities Commissions of UK and New Zealand, would be a more appropriate regulatory and compliance fit, as it would be dedicated to the needs of not-for-profit organisations.

The appropriate reporting thresholds and requirements under the Registrar's proposed functions.

While current State government regulation manages financial risk (although not for the significant number of organisations that are exempt from State regulation), there is no overarching national compliance regime to protect reputational risk among not-for-profit organisations. Industry regulation establishes reporting standards and monitors accountability and transparency of fundraising practices, enhancing ethical practice and professional standards alongside a legislative framework.

Regulatory risk should be managed nationally through the support and promotion of industry self regulation and the adoption of codes of best practice in order to promote public trust and confidence in professional fundraising.

FIA believes that moving toward national harmonisation and national regulation of fundraising laws is positive and deserves encouragement. The national harmonisation of fundraising legislation will be more successful and effective if it takes place together with wider reform of the regulatory environment of the not-for-profit sector, such as the development of national accounting standards for the sector. This is supported by:

- Woodward and Marshall, *A better framework – reforming not-for-profit regulation*, University of Melbourne, Centre for Corporate Law and Securities Regulation, 2004;

- The Commonwealth Government commissioned *Inquiry into Charitable and Related Organisations*, 2001;
- The Industry Commission's report on *Charitable Organisations in Australia*, 1995;
- CPA Australia, *Financial Reporting by not-for-profit entities*, 2000.

FIA supports the general thrust of these reports' recommendations on national harmonisation of regulation. In particular, FIA suggest that consideration be given to the following evidence-based recommendations in Woodward and Marshall (2004):

- Introducing a single specialist not-for-profit legal structure;
- Developing and implementing specific national accounting standards;
- Unifying the reporting and disclosure obligations for not-for-profit organisations across jurisdictions;
- Developing a simple Standard Information Return similar to those used in the USA, UK and New Zealand as a means for not-for-profit organisations to provide relevant information on their purposes and activities.

Whether the Office of the Registrar for Indigenous Corporations should be transferred to the new regulatory organisation.

FIA makes no comment on this proposal, as it is beyond the scope of FIA's mission.

Draft recommendation 7.2

Scope for gift deductibility

Whether the range of not-for-profits requiring formal endorsement for Commonwealth tax concessions (as distinct from self assessment) should be expanded.

Australian charities follow a fee dominant model ie 63% of funds are privately raised, although, surprisingly, not from private philanthropy, but from fees and payments, rather than reliance on government funding (Salamon and Anheir, 1999, *The emerging sector revisited*, Baltimore, Centre for Civil Society Studies, Institute for Policy Studies, Johns Hopkins University). While the market in Australia for not-for-profit services is large, further growth is limited because of the dependence on private fundraising. As only about 30% of funding in Australia comes from government, with the remainder raised privately, further support by government will increase the not-for-profit sector's efficiency and effectiveness.

One way of doing this is by increasing the available range of Deductible Gift Recipients (DGRs). Gifts to charities have been deductible in Australia since the introduction of Commonwealth income tax legislation in 1915 (O'Connell, *The tax position of charities in Australia – why does it have to be so complicated* (2008) AT Rev 17 at 21.) Treasury has estimated that the cost of providing gift deductibility was \$710 million in 2007-2008 (O'Connell, 2008, citing Treasury, *Tax Expenditure Statement 2006*, item A64). By contrast, the general level of giving in Australia is around \$11 billion (Giving Australia, *Research on Philanthropy in Australia*, Summary of Findings, 2005). Given the value of revenue from charities in Australia, this is a very modest level of subsidy, being much less than 1 per cent of all giving.

Given the small cost of gift deductibility compared to the productivity of the not-for-profit sector, there is no good economic reason to reduce this level of subsidy; or waive tax deductibility; or reduce the number of DGRs. Rather, there is a solid argument for government support to be increased for a sector which is so valuable to the Australian community, both economically and socially.

Draft recommendation 7.3

Options to promote and support planned giving

To encourage cost-effective giving, the Australian Government should explore options to promote and support planned giving, especially payroll giving and bequests. Options include increasing the awareness of the tax benefits of giving, and financial assistance and advice to smaller organisations to establish planned giving programs.

FIA draws the Productivity Commission's attention to FIA's Principles and Standards of Fundraising Practice, in particular:

- Standard of Workplace Giving Fundraising Practice;
- Standard of Bequest Fundraising Practice.

Separate Standards are necessary as the fundraising practices in these areas are completely different to each other. These Standards are mandatory for FIA members. The Standards cover both ethical considerations of fundraising practice and guidelines as to how to conduct particular fundraising practices. FIA considers that it is crucial for fundraisers to not only know how to use a particular fundraising technique, but also to understand the ethical basis underlying the technique.

However, planned giving is not the only cost-effective form of fundraising. There are many current forms of modern fundraising practice which are both cost-effective and productive. The fundraising industry is innovative and new forms of fundraising are continually being developed throughout the world and when developed, are readily taken up in Australia.

FIA's Standards also include:

- Standard of Charitable Gaming Fundraising Practice
- Standard of Charitable Telemarketing Fundraising Practice
- Standard of Direct Mail Fundraising Practice
- Standard of Electronic Fundraising Practice
- Standard of Events Fundraising Practice
- Standard of Face to Face Fundraising Practice
- Standard of Grants Fundraising Practice
- Standard of Overseas Aid Fundraising Practice
- Standard of School Fundraising Practice

FIA is the only peak organisation in Australia which has developed such an extensive body of Standards covering all aspects of fundraising practice. They were developed with the assistance of FIA senior members with current expertise in the area of each Standard.

FIA submits that the Australian government should facilitate all forms of fundraising practice by:

- streamlining regulation,
- facilitating compliance and reducing compliance costs, and
- encouraging compliance with fundraising industry standards of fundraising practice.

Draft recommendation 7.4 **Establishment of joint working party**

The role of different types of intermediaries in facilitating NFPs access to capital

Whether there is a need for a new legal form of incorporation for not-for-profits allowing equity investment similar to the UK Community Interest Companies.

Australian regulation does not differentiate between social enterprises and charities, and does not address the differences in their operations. FIA recommends the consideration of a model of regulation that recognises this difference, similar (but not identical) to the UK model, which regulates social enterprises as Community Interest Companies by the Regulator of Community Interest Companies.

However, FIA notes that the UK system of Community Interest Companies would not exactly fit a Commonwealth model, for several reasons. These are:

- The UK model is based on the needs of a particular community and therefore the CIC can be highly localised. There is no need in Australia for such a model, as the State/Territory system for incorporated associations meets the needs of small, local not-for-profit organisations.
- The emphasis on attracting investment is also not appropriate to Australian not-for-profit organisations, as this would conflict with State/Territory fundraising and charity legislation.

Draft recommendation 12.7

Review of Australian government tendering, contracting, reporting and acquittal requirements in the provision of services to reduce compliance costs. To reduce the current need to verify the provider's corporate or financial health on multiple occasions, even within the same agency, reviews should include consideration of:

- *Development of Master Agreements that are fit for purpose, at least at a whole of agency level;*
- *Use of pre-qualifying panels of service providers.*

How these proposals could be achieved without increasing the complexity of the engagement processes or agreements and contracts.

FIA notes that these proposals would make the tendering process for not-for-profit organisations similar to those for commercial organisations. However, FIA suggests that this is not always viable for the following reasons:

- If the intention is for Master Agreements to enable a not-for-profit organisation to provide services on a whole-of-agency basis, this is to be encouraged. However, without harmonisation of existing State/Territory laws, it would be difficult to establish a new reporting regime.
- Use of pre-qualifying panels of service providers would advantage established not-for-profit organisations and may have the effect of disadvantaging newer organisations which have not yet had time to establish a long-term track record, but remain capable of providing services.

SUBMISSION RESPONSE SUMMARY

Draft Recommendation 5.1	FIA supports this measure
Draft Recommendation 5.2	FIA supports this measure; we also note that FIA's mission embodies the principles of advancing professional fundraising through: <ul style="list-style-type: none"> • advocacy of standards, • professional development pathways, and • measurable credentials.
Draft Recommendation 5.3	FIA supports this measure; in particular FIA supports the adoption of the Standard Chart of Accounts.
Draft Recommendation 5.4	FIA supports this but suggests that it should be a function of the Registrar for Community & Charitable Purpose Organisations, as proposed in Draft Recommendation 6.4.
Draft Recommendation 6.1	FIA supports this measure. Please refer to FIA Submissions for further details.
Draft Recommendation 6.2	FIA supports this measure
Draft Recommendation 6.3	FIA supports this measure but considers the definition should be formulated in order to generate further discussion so that there is consensus on the new definition. Currently the confusion between State & Federal definitions of charity means that there is no consensus at present.
Draft Recommendation 6.4	FIA supports this measure. Please refer to FIA Submissions for further details.
Draft Recommendation 7.1	FIA supports this measure. Please refer to the recommendations of the Australian Taxation Office, via the Henry Tax Review.
Draft Recommendation 7.2	FIA supports this measure. Please refer to FIA Submissions for further details.
Draft Recommendation 7.3	FIA supports this measure. We refer the Productivity Commission to FIA Standard on Workplace Giving which sets the benchmark for FIA members for best practice in fundraising.

Draft Recommendation 7.4	FIA supports this measure. Please refer to FIA Submissions for further details.
Draft Recommendation 9.1	FIA supports this measure in principle but considers there could be additional detail for clarity.
Draft Recommendation 9.2	FIA supports this measure
Draft Recommendation 9.3	FIA supports this measure
Draft Recommendation 10.1	FIA supports this measure. We refer to the FIA Standard of Events Fundraising Tactics which sets out guidelines for FIA members working with vulnerable people.
Draft Recommendation 10.2	FIA supports this measure
Draft Recommendation 10.3	FIA expresses reservations regarding this proposal as it is not clear as to how it would be implemented or impact on the fundraising sector.
Draft Recommendation 10.4	FIA supports this measure
Draft Recommendation 11.1	FIA supports this measure
Draft Recommendation 11.2	FIA expresses reservations regarding this proposal as it is not clear as to how it would be implemented or impact on the fundraising sector, particularly in relation to the fixed fee for service or user contribution.
Draft Recommendation 11.3	FIA supports this measure
Draft Recommendation 11.4	FIA supports this principle
Draft Recommendation 12.1	FIA supports this measure but considers further discussion needed concerning implementation.
Draft Recommendation 12.2	FIA supports this measure
Draft Recommendation 12.3	FIA supports this measure
Draft Recommendation 12.4	FIA supports this measure
Draft Recommendation 12.5	FIA supports this measure
Draft Recommendation 12.6	FIA supports this measure
Draft Recommendation 12.7	FIA supports this measure. Please refer to FIA Submissions for further details.
Draft Recommendation 13.1	FIA supports this measure
Draft Recommendation 13.2	FIA supports this measure but considers it should be a function of the proposed Regulator as set out in Draft Recommendation 6.4.

BIBLIOGRAPHY

CPA Australia, *Financial Reporting by not-for-profit entities*, 2000.

Giving Australia, *Research on Philanthropy in Australia*, Summary of Findings, 2005

O’Connell, *The tax position of charities in Australia – why does it have to be so complicated* (2008) AT Rev 17 at 21

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The Commonwealth Government commissioned *Inquiry into Charitable and Related Organisations*, 2001

The Industry Commission’s report on *Charitable Organisations in Australia*, 1995

The Senate Economics Committee Inquiry - *Disclosure regimes for charities and not-for-profit organisations* (September 2008)

Woodward and Marshall, *A better framework – reforming not-for-profit regulation*, University of Melbourne, Centre for Corporate Law and Securities Regulation, 2004;