

FUNDRAISING INSTITUTE AUSTRALIA

SUBMISSION

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS:

INQUIRY INTO THE AUSTRALIAN CHARITIES AND NOT FOR PROFITS COMMISSION EXPOSURE DRAFT BILL

SUBMISSION COVER SHEET

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ABOUT FUNDRAISING INSTITUTE AUSTRALIA (FIA)

Established in 1968, FIA's purpose is to make the world a better place by advancing professional fundraising through promotion of standards, professional development pathways and measurable credentials so that our members achieve best practice.

The FIA has developed the Principles & Standards of Fundraising Practice as the professional fundraiser's guide to ethical, accountable and transparent fundraising. The Principles & Standards are vital to how the fundraising profession is viewed by donors, government, the community and fundraisers.

In order to achieve its mission, FIA conducts the following activities:

- Promote and enhance education, training and professional development of fundraisers.
- Provide a resource of fundraising information.
- Advocate for fundraising practice to Government, industry and the community.
- Support and promote certification of fundraisers.
- Develop standards and codes of practice.
- Promote and enhance fundraising as a profession.
- Promote and encourage research into fundraising and philanthropic giving.

Executive Summary

FIA has long called for national regulation for charities and not for profit organisations and harmonisation of State and Federal legislation. However, it expresses concern that, given the imminent implementation of the ACNC on 1 October 2012, the draft Bill lacks detailed content requirements of financial reports and not for profit governance requirements. FIA anticipates that these may be included in the regulations when drafted. Furthermore, any reporting for the sector needs to be streamlined between Commonwealth and State governments in order to ensure the sector is not burdened with duplicated reporting,

FIA is also concerned at the emphasis placed on enforcement in the draft Bill. Research shows that the vast majority of charities and not for profits do carry out their missions and fulfil the objects of their constitutions. Where there have been cases of fraud or embezzlement, it has been found that the organisation has had a weak Board which has failed to insist on standard compliance measures, such as two signatories for all transactions. Where compliance is implemented properly, the risk of such offences is minimal. Therefore, FIA recommends an emphasis on compliance, rather than enforcement.

FIA sets out its comments in detail below.

Definition of charities (Draft Bill, section 25 – 5 (6))

FIA supports the common law definition of charity now restored to the Bill. In particular, the public benefit test covers most modern charities and ensures that charities can develop in ways beneficial to the community without the limits of a narrow definition.

Entities (Draft Bill, Core Concepts, subdivision 205-A)

FIA supports the reporting requirements for the different tiers of small, medium and large entities which sufficiently differentiate between these entities. FIA notes that these requirements accord with recommendations made by FIA in previous submissions to Treasury.

Governance standards (Draft Bill, Division 45)

FIA finds it difficult to comment on governance standards as the details will be included in regulations yet to be drafted.

Both NSW and Victoria provide model rules for incorporated associations, which include detailed provisions for the relationship with members, including registration, liabilities, discipline and dispute resolution. These are satisfactory and FIA submits that they provide a template for the ACNC .

As the peak body for fundraisers, FIA also supports self-regulation to ensure that professional conduct and practice is maintained. FIA has developed the Principles and Standards of Fundraising Practice <http://www.fia.org.au/pages/principles-standards-of-fundraising-practice.html> 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.

The Principles and Standards have an educational role, and exist to guide fundraising professionals on best practice. The Principles are the overarching ethical codes that apply to all fundraisers and the Standards focus on specific disciplines of fundraising practice. The Principles and Standards cover the following:

Principles of Fundraising Practice

- Code of Ethics and Professional Conduct
- Fundraiser's Promise to Donors
- Code of Acceptance and Refusal of Donations
- FIA Complaints Process

Standards of Fundraising Practice

- Standard of Bequest Fundraising Practice
- 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
- Standard of Workplace Giving Fundraising Practice
- Standard of Social Media Fundraising Practice

Any person may contact FIA with a query in relation to the Principles and Standards of Fundraising Practice without resorting to the Complaints Process. Such an inquiry may clarify whether a complaint is warranted in relation to particular activities or actions of an FIA member and whether these activities or actions constitute a possible breach of the Principles and Standards of Fundraising Practice. Where breaches of FIA's Principles and Standards of Fundraising Practice have occurred, written complaints are directed to the FIA CEO in confidence.

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 professional standards of fundraising practice.

External conduct standards - anti terrorism and money laundering (Draft Bill, Division 50)

FIA requires its members to comply with the existing legislation concerning anti-terrorism and money laundering together with the AusAid and ATO guidelines on overseas donations in its Standard of Overseas Aid Fundraising Practice.

As pointed out in the submission by National Roundtable of Nonprofit Organisations, there is minimal evidence that Australian charities and NFPs are being exploited by such criminals or participating in such criminal activity, and the risk of such involvement is low. This being the case, and given that there are other government departments (ie Department of Foreign Affairs and ATO) who are able to monitor and prevent such activity, FIA agrees with the submission by National Roundtable of Nonprofit Organisations (pp5,6) that it is unnecessary duplication of function for ACNC to have investigative powers in connection with international aid donations or charities who organise and/or distribute them.

Reports (Draft Bill, Division 60)

The reporting requirements are generally sound, and accord with FIA's recommendations to Treasury. The longer reporting time of 6 months is important to allow charities to properly organise their financial records.

Section 60-60 concerning basic religious charities is confusing as subsection (1) conflicts with subsection (2). Is it intended that basic religious charities be exempt from reporting, or are they able to do so voluntarily and then come under the jurisdiction of the ACNC?

Regulatory powers of the ACNC Commissioner (Draft Bill, Chapter 4)

While FIA recognises the need to ensure compliance with the draft Bill, FIA is disappointed and expresses concern that the Bill emphasises investigation of NFPs and enforcement of compliance with the Bill by criminal sanctions, rather than risk management and education for charities and NFPs about compliance and government. Section 110-10 is the only section covering education and does not provide any information about how the ACNC will assist “registered entities by providing them with guidance or education” (subsection (1)) or “the public in understanding the work of the not for profit sector” (subsection (2)) . FIA assumes that these functions will be developed by the Commissioner. The understatement in section 110-10 contrasts strongly with the extensive preceding sections concerning regulation, investigation and enforcement in Chapter 4 and indicates that the education and information role of the ACNC may be subordinated to its investigative and enforcement role.

FIA urges ACNC to prefer the educational and guidance approach to compliance and governance over the punitive approach set out in Chapter 4.

The most recent research shows that the majority of NFPs are aware of risk management practices and actively implement them. Failure to comply is more likely to be related to limitations on administration and systems caused by low budgets, rather than criminal activity. Even where criminal activity has taken place, it has been enabled by poor compliance and governance (eg failure to require two signatories for financial transactions). Such risk management issues are easily rectifiable without resort to enforcement.

The new Australian and New Zealand Standard of Risk Management AU NZ ISO 31000:2009 provides authoritative guidance on risk management practice. In 2010, FIA and National Roundtable of Nonprofit Organisations sponsored the PPB not for profit risk survey 2010 <http://www.appichar.com.au/pages/risksurvey.html>. PPB surveyed the risk management practices of not for profit organisations and compared them to the key components of the recently introduced Standard, as there were several significant differences between the 2009 Standard and its predecessor.

The survey is the most recent available survey of risk management practice in NFPs. The outcome was encouraging; over 70% of respondents indicated they placed a high level of importance on risk management practices and understood the link between risk management and the organisation’s ability to achieve its outcomes. Larger NFPs had a more corporate structure with more sophisticated and mature systems in place to identify and manage risk, which is to be expected, especially in view of the survey finding that implementation of risk management practices had a significant relationship to a NFP’s budget; smaller organisations did not have sufficient capacity to devote resources to risk management policy and practice.

Less than half the survey participants have had risk management identification and training. This fact indicates an area where the ACNC has the opportunity to provide practical guidance and assistance, in particular to smaller, under-resourced NFPs, who would benefit from risk management guidance being included in the ACNC information portal and possibly other education programs as well. An educational focus is more appropriate than an enforcement focus, as the survey showed that smaller NFPs pay less attention to formal risk

management policy and practices because of budgetary constraints, rather than ignorance of compliance issues.

FIA supports:

- the inclusion of risk management guidance in the ACNC information portal; and
- the application of Standard of Risk Management AU NZ ISO 31000:2009 to NFPs.

Conclusion

FIA appreciates the opportunity to comment on the draft Bill and looks forward to the outcome of this consultation. FIA would appreciate the opportunity to represent its members at any hearings on the draft Bill that may eventuate.