

18 September 2020

Charitable Fundraising, Better Regulation Division
Department of Customer Service
Level 23, 4 Parramatta Square
Darcy St and Macquarie St
Parramatta NSW 2150

Via email: charitablereforms@customerservice.nsw.gov.au

Dear Sir/Madam

Response to cross-border recognition model for charitable fundraisers – discussion paper

Thank you for the opportunity to make a submission on the proposed cross-border recognition model for charitable fundraisers set out by the Intergovernmental Charitable Fundraising National Working Group (**Working Group**).

The Australian Institute of Company Directors (**AICD**) has a membership of more than 45,000 including directors and senior leaders from business, government and the not-for-profit and charitable sectors. The mission of the AICD is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society.

The AICD has long called for fundraising reform and welcomes the formation of the Working Group and the proposals set out in the discussion paper. On 1 April 2020 the Managing Director and CEO of the AICD, Angus Armour, [wrote](#) to the Hon Zed Seselja, Assistant Minister for Finance, Charities and Electoral Matters proposing a suite of reforms to assist charities and NFPs during the COVID-19 pandemic. This included reforms to simplify charitable fundraising arrangements and was based on priorities identified by leaders in the charitable and NFP sector. Copies were also sent to relevant state and territory Ministers.

In order to prepare this submission the AICD consulted further with members and stakeholders. This included our NFP Chairs forum, which provides advice to the AICD on policy issues affecting NFPs and charities. We are also involved in the [#fixfundraising](#) campaign and discussed the proposal with other members of that group.

Executive summary

As the Australian governments that make up the Working Group are aware, charities are facing significant funding constraints in the COVID-19 period and subsequent economic downturn. This was highlighted in an AICD member survey completed earlier this year where 43 per cent of not-for-profit respondents noted they were either very concerned or somewhat concerned about making a solvency or going concern assessment of their entity (further details below).

Simplification of charitable fundraising laws, as suggested in the discussion paper, is a straightforward and cost-neutral way that Australian governments can assist charities to improve their funding position. This should be regarded as an urgent economic reform in response to the COVID-19 pandemic and given

appropriate priority by state and territory governments. It is only a relatively small and preliminary step and one that should be the first phase in a medium-term project to simplify fundraising laws and reduce red tape.

The AICD suggests that the Working Group affirm the model and then move quickly to an implementation phase where consistent legislation, with common language and processes, is introduced as soon as possible into state and territory parliaments.

In the interim, state and territory governments might contemplate setting out a public “no action” position in relation to enforcement of local registration and notification requirements on charitable fundraising. This would be similar to the [“no action” position that ASIC took around the postponement of AGMs](#) as a result of COVID-19. This would allow charities some comfort in carrying out much needed fundraising while parliaments consider necessary legislation.

Discussion paper proposals

The AICD supports the proposal set forward in the discussion paper as an important first step and a signal of intent from Australian governments. We support the concept of the Australian Charities and Not-for-profits Commission (**ACNC**) as a “one stop shop” where registration with the ACNC amounts to registration with all states and territories. We think it important that this registration be on-line and simple and that by registering with the ACNC a charity is deemed to have notified states and territory authorities of its intention to fundraise within their jurisdiction with no further notification necessary.

We note that the discussion paper indicates that states and territories are considering exempting entities from auditing and reporting requirements where they have complied with ACNC requirements, although the paper falls short of making a firm recommendation. We would strongly urge states and territories to also adopt that approach.

We also support the concept of information sharing among state and territory regulators for the purposes of disciplinary and enforcement actions.

In summary, we support a model that provides for a simple single national point of registration, notification, regulation, audit and reporting for charitable fundraisers.

AICD survey

As noted in the Executive Summary, between 18 May and 2 June 2020, members of the AICD were invited to take part in a survey attempting to capture the governance impact of COVID-19 on Australian boards. A total of 2,371 members participated with 38 per cent of those from the not-for-profit sector (including charities). Some of the findings are relevant to the matters set out in the discussion paper.

When it came to the current financial position of charities, around 43 per cent of directors of not-for-profit entities (n=817) said they were either very concerned or somewhat concerned about making a solvency or going concern assessment of their entity because of COVID-19. This exceeded the concerns of directors of listed (31 per cent) and large private (33 per cent) and even SMEs (40 per cent). It shows that directors in the NFP sector, including charities, are feeling especially concerned about their organisation’s ability to continue to function.

When asked, in the survey, to nominate the three areas of governance in which NFP directors would most like to see further regulatory reform or relief to help their organisation recover from the impact of COVID-19 (n=760), the fourth most popular response was “simplification of charitable fundraising laws” with 36

per cent support.¹ This shows strong endorsement from directors of NFP entities for a simplification process.

Next steps

Please do not hesitate to contact Senior Policy Adviser David McElrea on dmcelrea@aicd.com.au if you wish to discuss this matter further.

Yours sincerely,



Louise Petschler GAICD
General Manager, Advocacy

¹ It followed behind accelerated funding for NFP and charities sector (76%), introduction of pro-growth, pro-innovation policy settings (52%) and virtual AGMs as a permanent feature of the Corporations Act (51%). It was rated above a pause on all new regulation (35%) and re-think of director liability settings (23%).