

FUNDRAISING INSTITUTE AUSTRALIA

Australian Charities and Not-for-profits Commission Amendment Regulations (No. 2) 2018

(External Conduct Standards)

and

Deductible Gift Recipient (DGR) Reforms

SEPTEMBER 2018

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On behalf of its more than 1500 members, Fundraising Institute Australia welcomes the opportunity to make a short submission to the Treasury concerning draft External Conduct Standards for charities operating overseas.

FIA is the largest representative body for the \$12.5 billion¹ charitable and not-for-profit fundraising sector, supported by some 14.9 million Australians. For over 30 years, FIA has administered a Code and system of self-regulation for the sector, promoting an ethical framework for professional fundraising.

The conduct of charities, whether at home or overseas, has a direct and significant bearing on donor trust and support, not just for particular charities but for charitable fundraising overall. For this reason, FIA has an interest in conduct standards being developed by Treasury.

FIA notes that Treasury intends to take a 'principles' based approach to regulating the overseas conduct of charities in the interest of limiting the regulatory burden on the sector. While FIA supports this approach in theory, we caution that reliance on a 'reasonable expectations' test to make judgements 'in the circumstances' introduces a significant element of uncertainty and governance risk for charities, given the significant powers of sanction available to the ACNC.

Under Part 4-2 of the ACNC Act, the charities regulator can take disciplinary action (e.g. by issuing a formal warning) or impose criminal penalties even in cases where the charity has not been convicted of an indictable offence. To take formal action against a charity which has not been convicted in relation to actions alleged to have occurred in overseas jurisdictions would be extremely damaging to that charity's reputation and future ability to raise funds and could undermine donor confidence in the sector as a whole.

The significant penalties for non-compliance with 'principles-based' standards are likely to increase the governance risk for charities, and consequently the difficulties charities face in attracting talented and qualified staff and board directors to the sector.

Unduly onerous regulation on charities is unnecessary. Most charities, except for very large ones, find that the costs of compliance adversely affect their budgets and ultimately their ability to pursue their charitable purposes. Reasonable limits need to be placed on the expectations of charities to control and be accountable for the conduct of third parties operating overseas. A greater effort needs to be made to find a balance between responsibility and risk.

¹ Source: Giving Australia 2016

Recommendations:

- The ACNC should not, under new Conduct Standards, take disciplinary action against a charity unless it has been convicted of an indictable offence or has incurred a criminal penalty.
- Clear guidelines should be developed in collaboration with the not-for-profit sector to assist charities in making good judgements and avoiding improper conduct in a range of circumstances.
- FIA urges the Government to adopt an educative rather than a strict enforcement approach to administration of the conduct standards.

Deductible Gift Recipient (DGR) Reforms Consultation Paper Aug. 2018

FIA wishes to express its concern that neither the current DGR Consultation Paper nor the then Minister's statement of 5 December 2017 have addressed the two questions (9 and 10) grouped together as Issue 5 in the first Consultation Paper: *Tax Deductible Gift Recipient Reform Opportunities*.

While concurring with the Minister's statement that the reform proposals 'received broad support', in FIA's case that support was qualified by strong opposition to the proposal to introduce a formal rolling review program plus annual certification.

Question 9 went on to ask for other approaches that could be considered. FIA's response, which was informed by a survey of members, put forward a more proportionate alternative consistent with the ACNC's 'Report Once' policy to require annual certification as part of the Annual Information Statement coupled with random auditing of DGRs.

Unlike other matters specifically addressed in the Minister's statement including the 'in Australia' requirement and mandating remediation levels for environmental organisations there has been no official response to the DGR review and certification proposals. Specifically the Government has not ruled out an earlier proposal to introduce "a formal rolling review program" and a requirement for 'DGRs to make annual certifications'. Neither are required at present.

This is of considerable concern to FIA members most of whom are DGRs. Complying with these requirements would add significantly to the red tape burden on a sector already subject to high levels of regulation. This would be inconsistent with the Government's frequently stated objective to lower the regulatory imposts on charities and not-for-profit organisations.

FIA seeks clarification on the Government response to Questions 9 and 10 in the first DGR Consultation Paper and particularly to the FIA's alternative approach detailed in its previous DGR submission.

Recommendation:

- The Government should reject an earlier proposal to introduce “a formal rolling review program” and a requirement for ‘DGRs to make annual certifications’.

End of Submission