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THE WILDERNESS SOCIETY

Protecting, promoting & restoring Australia's WildCountry

A Response from The Wilderness Society Inc to the Proposed Charitable Fundraising Regulation Reform

General Framework

There is no doubt that a move to simplify fundraising regulation, particularly across state/territory borders, is very welcome as the current regime is a nightmare for organisations operating across different jurisdictions.

The proposed regulations will apply to all those entities registered with the ACNC, which in effect means those charities seeking tax concessions (or who are based in the territories). They do not apply to other NGOs such as non-charitable lobby groups or sporting or social clubs who also raise funds (and could be subject of fraud or deceit and bring the broader NFP sector into disrepute – one of the purported reasons for regulations). Indeed, if transparency and accountability to donors are key concerns, then it is the activity of temporary and fringe groups rather than registered charities which are arguably most in need of regulation.

So, the proposed framework will not be comprehensive in coverage, but where it does cover NGOs, a single law with a single regulator may raise issues of government control of the sector and also issues of flexibility. A third "lighter" alternative would be for each state to simply recognise the registration and governance of other states and therefore not require licensing if an organisation was regulated in another jurisdiction. For instance, driver's licenses are issued by state/territory authorities, but recognised around the country without the need for further licensing. Not sure that this fits with previous COSS positions though.

Specifically in response to the discussion paper, The Wilderness Society proposes the following feedback

Q2.1 – 2.3 – Is it necessary

Given the risk of cowboys and ensuing lack of confidence in whole NGO sector, we would probably say regulation is necessary, especially in overcoming duplication and different requirements in different jurisdictions.

Some examples of duplication and non-synchronised state jurisdiction encountered by The Wilderness Society in operating national activities administered from one central state are:

- Registration for collections acts in some states requires establishment of a separate committee or the nomination of responsible persons located within that state to

administer the collections activity. For a national organisation whose fundraising activity is managed centrally in one state this is very difficult. The nominated "responsible persons" for a national organisation should be recognised in all states and territories.

- "Collections acts" for different states and territories often have different titles and are administered by different departments depending on state.
- Different time lines and processes for renewal means an organisation fundraising across Australia may be required to undergo an entirely different registration, reporting and renewal process at eight different times of the year.

Q2.4 – 2.5 Exemptions

The assumption of knowledge or lack of knowledge on the part of the donor of the recipient of funds should not be elevated to being a crucial determinant of what needs to be regulated. It assumes the only issue is one of deceit and "value for money", rather than a broader transparency. This is particularly the case in relation to certain religious organisations (cults), where the assumption of greater knowledge may not be straightforward, and there are broader societal issues at play. However, on the logic used, other fundraising activities should also gain an exemption. For instance:

- Fundraising from any organisation's members (not just religious organisations) – because they can be assumed to have knowledge and ways of getting more information

The exemptions for government grants is supported.

Q2.6-2.9 Thresholds

The national regulation kicks in at $50K per year funds raised. Presumably this threshold is just the regulated activities, not total fundraising (including through exempt activities), but this is not stated.

The discussion paper is not clear how the threshold will work. Para 22 says that an organisation's annual fundraising up to $50K is exempt, but para 25 says the national laws will only apply to charities that raise over $50K. These are different propositions. The first suggests that the first $50K raised is exempt for all organisations, whereas the second suggests that all fundraising of big fundraisers is regulated. Both have implementation problems. In the first version, spending the first half of the year fundraising may take place under state law, then an NGO hits the threshold has to register and come under the national law – all for the same program. If it is the second approach and all the big fundraiser's fundraising is covered, then there will be some NGOs whose annual fundraising is around that mark will not know which laws cover them (budget for $45K, raise $51K – or vice versa), and may bounce from one jurisdiction to another from year to year or within one year.

This needs to be clarified, but clearly one consistent regime would be preferable – although this may cut across the attempt to tread lightly on the small players.

Para 22 states exemption limit of $50k could apply to a group of closely related organisations. On what criteria would this relationship be established? This needs to be clarified.

Q2.10-13 Registration

My first reaction is that if an organisation is a charity, then it will have been deemed to have charitable purposes and be acting (solely) to fulfil those purposes. This should be enough to

say that all ACNC registered charities should automatically be authorised for fundraising and fits with the minimal regulation “report-once” goal of the regulatory reform. Any problems in the conduct of fundraising could then be dealt with by fines, suspensions etc, rather than as a registration issue..

Q3.1 ACL Provisions

Q3.2 Exemptions to ACL calling hours should exists for charities between the hours of 6pm and 8pm

Q3.3 Charitable entities should be exempt from the unsolicited selling provisions of the ACL as interpretation of activities in satisfaction of the “in trade or commerce” criteria would be confusing for entities and consumers, prone to misinterpretation and difficult to regulate.

Q4.1-7 Disclosure Requirements

The Wilderness Society supports the disclosure of the following:
4.1the inclusion of ABN on all public documents, no exemptions
4.3 the wearing of name badges and contact details for relevant charity
4.4 the inclusion of ABN, name of charity and contact details for all unattended collection points, advertising and print materials
4.5 the disclosure of DGR status

The Wilderness Society does not support the following:
4.2persons engaged in fundraising activity to provide information about whether the collector is paid. Whether a person is paid or not is only one input into a question about whether the money goes to the intended purpose and highlighting this during solicitation process would serve to reinforce populist prejudice against professionals in the NGO sector – the “shouldn’t we just be doing it for love” idea which undermines the sector as a whole. The charity sector employs many highly skilled professionals (despite also having a huge volunteer component and input), and there is no reason to single out fundraising. If charities see a market advantage in volunteers collecting, they are free to have a badge saying “Volunteer Collector”, but disclosure should not be mandatory. Compulsory disclosure would have a potential impact on the ability of charities to raise funds through professional fundraisers.

4.7 Requiring ACNC contact details and a link to the ACNC on public documents. This would confuse donors by referring to more than one organisation and interfere with professional communication design and strategies. The ACNC info should be provided with receipts for funds, but not on all documents.

Q5.1-4 Reporting Requirements

The reporting of qualitative elements should be kept to a minimum as such reporting is time-consuming, and largely subjective, and biased toward short-term programs than investment in programs whose outcomes may not be apparent for a long time. Other activities like advocacy are not necessarily amenable to outcome-based reporting (because cause-effect is not clear, and sometimes unsuccessful advocacy is still a public benefit). Charities should be able to justify their programs to donors, but not to be required to do so to a regulatory authority least we open the way for government regulation of NGO outcomes.

Another difficult aspect of regulated reporting on the outcomes and costs of fundraising activities arises when particular fundraising activities are integral to the core purpose of the organisation. Some social enterprises may fall into this category (is the remuneration of the Big Issue sellers a fundraising cost, or a core purpose), but fundraising may also have a very real public information or advocacy function. Further, if a charity puts out publicity material on an issue, does it becomes a fundraising cost simply because there is also an appeal for money included? Similarly, street canvassers may be primarily engaged in fundraising, but the public information and advocacy roles in talking to perhaps thousands of people should not be ignored.

This is not to say there should be no financial reporting, but it should be top level organisation-based reporting, not activity based and should not only be focussed on fundraising. Record-keeping for audit purposes is a different consideration to the requirements of government reporting and the two should not be confused.

Consideration should also be given to duplicity in reporting for charitable organisations who are already required to provide such outcome reports under alternative regulation such as the Register for Environmental Organisations in management of a Public Fund.

Q6 – Internet and electronic fundraising

The proposed prohibition on electronic fundraising for charitable purposes unless done by an ACNC registered charity is a problem. It does not address the issues of spam etc, and scam inheritances from Nigerian princes are problems because they are scams – not because they arrive by email rather than by post. There are a range of fundraising scenarios which may be reduced or banned under a blanket prohibition against non-charities e-fundraising. For instance:

- Organisations who may not be charities, but may be raising money for charitable purposes (for instance, by giving money to charities)
- A company or non-charity NGO with a web sales/membership form that then has a tick-box to donate a % to a charity.
- An organisation which is not a charity because it has dual purposes (one of which is not charitable), but uses the internet to raise money for its charitable activities. Consider an ethical tourism provider supporting local projects in Aboriginal communities. If it sets up a foundation (eg. as the highly reputable Intrepid Travel have done with the Intrepid Foundation), it is okay as the Foundation is a separate charitable entity, but smaller operations without this legal structure may be prohibited from supporting a local project where they work.
- A commercial business may make a genuine response to an emergency/disaster, or a sports club may send an email around to raise money for its members effected by a disaster. They may not claim tax concessions, but it would still be electronic collection for a charitable purpose.
- “Crowdfunding” would be limited to only established organisations, yet arguably it has had a key role as a start-up tool before any formal organisation is established.
- Viral marketing or sharing via of youtube or other social media platforms (eg the recent and highly acclaimed Kony 2012 campaign “Invisible children” which has been shared via facebook to millions of people worldwide

Para 59 suggests that electronic fundraising poses limitations for donors to access information about the cause versus face to face or telephone fundraising. The same could

be said for many forms of direct mail which remains a very common form of fund solicitation in Australia. It could in fact be argued that electronic fundraising and the provision of links to organisation websites provides donors with greater opportunities to access further information.

The potential for nuisance if this technology if overused is adequately regulated via current privacy and spam legislation.

In many of these cases there may be concern that the funds raised by such entities are not used for the charitable purpose, that is a matter of fraud/deceit, but the same would apply to a registered charity that used funds raised for a non-charitable purpose. In other cases, the situation could be changed/managed depending on the rules around 3rd party fundraising, but these are not clear here. Para 68 in the next section suggests e-fundraising for charities by professional fundraising agencies would happen, but these agencies (even when acting as 3rd parties) are still not charities and would appear to be covered by the electronic fundraising prohibition.

The Wilderness Society supports the inclusion of ABN numbers on electronic communications but does NOT support the prohibition of electronic fundraising unless conducted by a charity registered with the ACNC.

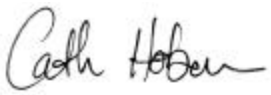
Q7 – 3rd Party Fundraising

This section distinguishes 3 very different "third-party" examples, and it is only intended to regulate professional 3rd party fundraisers.

7.1 – 7.7: The Wilderness Society supports the registration for 3rd party fundraisers with the added requirement to register the names of charities for whom they are authorised to raise funds. We do not support the need for 3rd party fundraisers to disclose the fees that they are being paid for service or paid labour is being used for fundraising activities.

This above approach would provide transparency, without the false assumptions that paid fundraisers are more expensive than in-house or is bad, or that it is essential that people know that fundraising is paid.

Yours sincerely



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