

CPA Australia Ltd
ABN 64 008 392 452

Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia

GPO Box 2820 Melbourne
VIC 3001 Australia

T 1300 737 373

Outside Aust +613 9606 9677

cpaaustralia.com.au

2 September 2020

Charitable Fundraising Regulation 2020 consultation
Better Regulation Division
Department of Customer Service
4 Parramatta Square
Parramatta NSW 2150

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

Charitable Fundraising Regulation 2020 Consultation

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia welcomes the New South Wales (NSW) government's proposals to reform fundraising regulation following the Bergin report recommendations. We support the proposals to align the fundraising regulation requirements with the regulatory requirements of the Australian Charities and Not-for-profits Commission (ACNC). This is an important red-tape reduction and regulatory reform initiative we have advocated for many years; for example, in our [submission](#) to the NSW Charitable Fundraising Review in 2016. We have restricted our comments below to the proposed regulations relating to record keeping requirements, financial reporting and auditing requirements.

Record keeping requirements (section 5.8 of the Regulatory Impact Statement and clauses 17 & 18 of the draft regulations)

We note that draft regulation 17 proposes that records relating to income and expenditure must be maintained for a period of at least 7 years. This aligns with section 55-5(4) of the ACNC Act 2012 that requires maintenance of records for a period of 7 years. However, we note that draft regulation 18 proposes that additional records, including certain details relating to income, need to be maintained for a period of 3 years. This proposed shorter retention period for additional records does not align with the proposed period for maintaining records relating to income and expenses in draft regulation 17, or with the requirements in ACNC legislation. We suggest modifying the minimum record keeping requirement in draft regulation 18 to 7 years, to ensure alignment.

Clause 17(3) of the draft regulation states "the records must be kept, maintained and readily accessible for the purposes of the auditing of the records under section 22(2A) of the Act". Whilst we appreciate section 22(2)(a) of the *Charitable Fundraising Act 1991* relates to record keeping, we are concerned that the above referred clause could be misread as stating that the auditing requirements are set out in section 22(2A) of the Act. To address this, we suggest clause 17 be amended as follows:

17 Records of income and expenditure must be appropriately kept, maintained and readily accessible

For the purposes of section 22(2) of the Act, records of income and expenditure must be kept and maintained as follows—

- (a) in English, or readily accessible and easily convertible into English,*
- (b) for a period of at least 7 years, or for a shorter period approved in writing by the Minister, after the income or the expenditure to which the records relate is received or incurred.*
- (c) to identify the charitable purpose for which any money or benefit was received or paid in the course of a fundraising appeal.*
- (d) in a manner readily accessible for the purposes of the auditing of the records under section ~~22(2A)~~ 24 of the Act.*

Financial reporting (section 5.9 of the Regulatory Impact Statement and clause 19 of the draft regulations)

As stated above, we welcome the proposals to align and harmonise NSW fundraising regulation with the governance, financial accountability and record-keeping requirements of the ACNC. We note the statement that this alignment could be achieved through an ‘order’, or more broadly by exemption in the Regulation and we also note that a Discussion Paper has been issued on 1 September 2020 seeking feedback on proposals on an Australia-wide easing of regulatory burden on charitable fundraising. We welcome the broader consultation on fundraising regulatory reform and recommend that legislative instruments, necessary to achieve the proposed alignment with the ACNC requirements, are developed and enacted at the same time as this Regulation.

We make the following additional suggestions in respect of clause 19 for your consideration:

- Clause 19(2)(a) of the draft regulation proposes that an annual financial statement must be prepared, and clause 19(3)(a) proposes that the annual financial statement must be prepared in accordance with Australian Accounting Standards (AAS). There appears to be no minimum thresholds or other exemptions applicable to these proposed requirements. Therefore, we presume all entities subject to the NSW fundraising regulations, regardless of size, will need to comply with these annual financial reporting requirements.

Charities registered with the ACNC with annual revenue below \$250,000 (a small charity) are not required to prepare and lodge financial statements and are only required to provide minimal financial information (which can be cash-based) in their Annual Information Statements. Such information does not have to be prepared in accordance with AAS.

It appears that the higher level of requirements (preparation of annual financial statements in accordance with AAS) will apply to entities that are also small charities registered with the ACNC, and as such, would seem to be contrary to the aim of the proposals to align the NSW fundraising regulations with ACNC requirements. It is our view that such small charities, that are also subject to the NSW fundraising regulations, should only be subject to the reporting requirements of the ACNC. Following on from this and for consistency, we see no reason why entities that are not registered with the ACNC but are only subject to NSW fundraising regulations, should be required to comply with a higher level of reporting compared to their counterparts who are registered with the ACNC. In particular, we do not believe such small entities should be subject to the preparation of annual financial statements in accordance with the AAS, as they are unlikely to possess the resources or expertise required to readily undertake such reporting. Accordingly, we suggest that the draft regulations be

suitably amended to ensure compliance requirements are both proportionate and aligned with the ACNC reporting requirements.

- Clause 19(5) of the draft regulation proposes to introduce additional financial reporting requirements for authorised fundraisers that are organisations which receive more than \$100,000 gross annually. We are unable to identify the rationale for the introduction of a \$100,000 threshold for such additional financial reporting requirements, and as stated in the first bullet point above additional reporting requirements are likely to add an unnecessary compliance burden to such organisations. Accordingly, we suggest that annual financial reporting requirements be aligned with those of the ACNC (required for entities with \$250,000 or more in annual revenue). Notably, registered charities subject to the ACNC's financial reporting requirements have to comply with minimum AAS (section 60.30 of the ACNC Regulation 2013), which we believe will assist with the fulfilment of some of the additional reporting requirements being considered in the draft Regulation, including "details of accounting principles and methods adopted in the preparation of financial statements".
- Clause 19 refers to "...\$100,000 gross" and clause 20 refers to "...gross of income of \$250,000 or more". We presume both these threshold references are to gross income. To achieve alignment with the requirements of the ACNC we suggest any references to gross income be modified to refer to "annual revenue".

Auditing requirements (section 5.10 of the Regulatory Impact Statement and clause 20 of the draft regulations)

As stated above, one of the main objectives of these proposals is to align and harmonise NSW fundraising regulation with the governance, financial accountability and record-keeping requirements of the ACNC. However, clause 20 of the draft regulation states that a person or organisation is exempt from obtaining an audit "if the person or organisation does not receive a gross income of \$250,000 or more, in the financial year to which the audit requirement relates, from any fundraising appeal conducted by the person or organisation in the financial year". We presume this would mean that fundraisers with gross income of \$250,000 or more must have their annual financial statements audited. This is inconsistent with the ACNC's requirements which provide that:

- Medium charities (annual revenue of \$250,000 to less than \$1,000,000) can obtain a review rather than an audit.
- As stated above, thresholds are based on "annual revenue", rather than "gross income from any fundraising appeal".

We recommend that assurance requirements (both review and audit) proposed for entities subject to NSW fundraising regulations be aligned with the ACNC's requirements.

If you require further information on the views expressed above, please contact Ram Subramanian on +61 3 9606 9755 or ram.subramanian@cpaaustralia.com.au.

Your sincerely



Gary Pflugrath CPA
Executive General Manager
Policy and Advocacy