Federal Inquiries and Fundraising

What were the five significant federal inquiries over the last 15 years about the broad regulation of the nonprofit sector?

2. Inquiry into the Definition of Charities and Related Organisations (2001)
5. Productivity Commission – Contribution of the Not-for-Profit Sector (2010)

These reports form the core of inquiries about national nonprofit reform amounting to some 1.4 million words on 4,291 pages of final and draft reports informed by 2,283 submissions (7.6 million words or 22,502 pages) and 2.2 million words of transcript on 6114 pages. There are about 150 recommendations for reform.

What were the recommendations in relation to fundraising?

The Industry Commission (1995) and Productivity Commission (2010) both recommended that state legislation should be rationalized. Both recommended harmonization or mutual recognition of the legislation. The Productivity Commission made detailed recommendations on a national regulator which would also seek to register those fundraising across state jurisdictions. The Productivity Commission did go one step further by recommending a national register for cross jurisdictional fundraising. Although not mentioning fundraising specifically, the Henry Tax Review endorsed the notion of a national regulator for charities.

The Senate report on the Disclosure Regimes for Charities and Not-for-Profit Organisations in 2008 went a step further and recommended a National Fundraising Act following a referral of powers from the States. It would apply nationally, to all organizations by licence with proportionate annual report disclosure.

The other recommendation that has appeared more than once is the alteration of the tax deductible donation monetary threshold. The Industry Commission recommended that the lower threshold should be abolished and the Henry Review recommended the threshold be raised to $25. The Productivity Commission suggested that the range of organizations entitled to gift deductibility be expanded and planned giving should be promoted and supported by the government.

What is happening currently?

The Treasury released a scoping study for a national regulator in January 2011 and sought views on the role a national regulator might play with respect to fundraising.¹

The Council of Australian Governments Business Regulation and Competition Working Group (BRCWG) was given a brief to develop a ‘governance structure to develop a nationally consistent approach to fundraising regulation’.²

Ministerial Council on Consumer Affairs (MCCA) is now undertaking a project to harmonise fundraising legislation under the oversight of the BRCWG.

The Treasury scoping paper noted that:

MCCA will issue a paper exploring the options for harmonised NFP fundraising laws in early 2011. This paper will explore the arrangements for the administration and enforcement of these laws, as well as their detailed content, and their interaction with the regulatory framework for NFP governance and accountability.

The Inquiries: Recommendations on Fundraising

Industry Commission, Charitable Organisations in Australia, June 1995


Recommendation 14 (12.3 in text)
The $2 lower limit for donations in order to gain tax deductibility should be removed. Individual organisations should decide which donations are to be treated as tax deductible — for which they would issue receipts and keep records in the prescribed way.

The Council of Australian Governments should consider approaches to achieving greater efficiency and effectiveness of fundraising regulation among States/Territories. Two suggested approaches are:

- uniformity of legislation; or
- mutual recognition of legislation.

Specific consideration should be given to addressing issues of:

- public disclosure of the role of contract fundraisers;
- public nuisance and donor privacy; and
- the types of organisations to which regulation applies.

Inquiry into the Definition of Charities and Related Organisations, June 2001

  —Fundraising not considered as an identified issue
Recommendation 9

The committee recommends that a National Fundraising Act be developed following a referral of powers from states and territories to the Commonwealth. This Act should include the following minimum features:

- It should apply nationally.
- It should apply to all organisations.
- It should require accounts or records to be submitted following the fundraising period with the level of reporting commensurate with the size of the organisation or amount raised.
- It should include a provision for the granting of a licence.
- It should clearly regulate contemporary fundraising activities such as internet fundraising.

Productivity Commission, Contribution of the Not-for-Profit Sector: Commissioned Study, January 2010

Recommendation 6.3

To promote confidence in and reduce the compliance costs associated with fundraising regulation, Australian governments, through the Council of Australian Governments Business Regulation and Competition Working Group, should:

- agree to and implement mutual recognition and harmonised fundraising regulation across Australia, through the establishment of model fundraising legislation
- support the development of a fundraising register for cross-jurisdictional fundraising organisations and/or activities, to be administered by the proposed national Registrar for Community and Charitable Purpose Organisations
- clarify the responsibility for regulation of fundraising undertaken through electronic media such as the internet, and move to ensure appropriate regulation of such mediums including through Commonwealth legislation.

Recommendation 6.5

The Australian Government should establish a one-stop-shop for Commonwealth regulation by consolidating various regulatory functions into a new national Registrar for Community and Charitable Purpose Organisations. While ultimately the Registrar could be an independent statutory body, initially it should be established as a statutory body corporate or organ in the Australian Securities and Investment Commission.

The Registrar will undertake the following key functions:

- register and regulate not-for-profit companies limited by guarantee and Indigenous corporations, with a stakeholder team dedicated to Indigenous corporations
- assess the eligibility of not-for-profit organisations for Commonwealth tax concession status endorsement and maintain a register of endorsed organisations
- register cross-jurisdictional fundraising organisations and/or activities by not-for-profit organisations
- provide a single reporting portal for public record corporate and financial information.
- provide appropriate guidance in relation to governance matters
- investigate compliance with regulatory requirements
- provide complaints handling in respect of the above functions.

**Recommendation 6.6**

The Registrar should implement the principle of ‘report once, use often’ by providing a single reporting portal and form for annual reporting on community-purpose, governance arrangements, financial accounts and fundraising activity. Australian governments, through the Council of Australian Governments, can support this principle and substantially reduce compliance costs for not-for-profit organisations by:

- adopting and developing an implementation strategy for the Standard Chart of Accounts for reporting by not-for-profits in receipt of government grants or service contracts
- expanding the Standard Business Reporting initiative to include reporting requirements by not-for-profits
- encouraging their agencies to utilise the governance and financial account information (that will be lodged with the Registrar) to meet their organisation level ‘health check’ requirements for contracting purposes.

**Recommendation 7.3**

The Australian Government should progressively widen the scope for gift deductibility to include all endorsed charitable institutions and charitable funds. Consistent with the Australian Taxation Office rulings on what constitutes a gift, payments for services should not qualify as a gift.

**Recommendation 7.4**

To encourage cost-effective giving, the Australian Government should explore options to promote and support planned giving, especially payroll giving. Specifically, the Australian Government should provide funding for a national campaign to promote payroll giving and the associated tax benefits. As part of the campaign, governments should encourage the establishment of payroll giving within all their agencies.

**Australia’s Future Tax System Review (the Henry Review), May 2010**


**Recommendation 13**

Gift deductibility should be retained, with the deductibility threshold raised from $2 to $25.