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Dear Myles

Defining and Accounting for Fundraising Income and Expenses: Draft Report

Governance Institute of Australia is the only independent professional association with a sole focus on the practice of governance. We provide the best education and support for practising chartered secretaries, governance advisers and risk managers to drive responsible performance in their organisations.

Our Members are all involved in governance, corporate administration and compliance with the Corporations Act 2001. Furthermore, many of our Members serve as officers of charities, or work for, or are involved with charities, many of which are companies limited by guarantee and various of which are entitled to tax concessions. As a result, they are also involved in the governance of charities and compliance with various charitable fundraising requirements.

Governance Institute of Australia (Governance Institute) is itself a charity operating in the legal form of a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

Our Members therefore bring extensive knowledge of administration, governance and regulatory frameworks in the charity sector to bear on our comments in this submission. We welcome the opportunity to provide feedback on the draft report: *Defining and Accounting for Fundraising Income and Expenses* (the draft report) and draw upon the expertise and experience of our Members in providing our response.

General comments

The draft report presents a very thorough and well-presented report into the framework and issues surrounding the manner in which charities report on fundraising. Governance Institute strongly supports the intention to support charities to publish meaningful information about fundraising, particularly in the absence of a coherent fundraising framework and reporting guidelines.

Indeed, Governance Institute notes that it is important that the sector push for reform to fundraising legislation, and advocate for uniform fundraising provisions across Australia. We

believe that such an approach will go some ways towards reducing the current red-tape and onerous compliance provisions that exist for charities.

We recognise that different Australian state and territory regulators already require specific financial information on fundraising to be reported, and that there is significant variation as to fundraising reporting requirements between jurisdictions. Further, we note that there are few common requirements across jurisdictions. Those jurisdictions may therefore require national charities to prepare multiple financial reports to satisfy different regulatory requirements.

We also note that having a consistent accounting framework should not be so restrictive that charities cannot reflect their individual organisational and fundraising strategies. We understand that the development of a better accounting framework for charities is important; however, we also share concerns that the endorsement of 'comparison ratios' may be used to analyse charities, where the ratios are indicative of only a limited aspect of the charity's operations. We note that 'comparison ratios' in this regard encourage a system whereby charities are compared only on their administrative costs, rather than the actual charitable work that they do.

Governance Institute believes that there are several problems with comparison ratios, including that:

- there may be difficulties for charities capturing information which adequately reflects the 'revenue' generated when a major component is in the form of voluntary donation of skills and time
- charities might be encouraged to cut overheads, in order to bring down their ratios, but that this might not be beneficial for the charity seeking to achieve its charitable purpose
- charities might be encouraged to stop spending in order to ensure that its budget is not skewed, thereby, negatively affecting the achievement of the charitable purpose, and
- information about the value of the charity might be obscured through a focus on comparison ratios.

We note, therefore, that there must remain a balance in the way in which charitable fundraising is reported. This should balance reporting requirements to ensure that reporting provides some comparability, and demonstrates some value to the public, while also allowing charities to reflect the range of activities that they undertake.

Governance Institute strongly supports the approach of the draft report, and in particular, our Members note that in accordance with option 4, the design of a system that recognises fundraising is in many ways a whole-of-organisation activity with expenses best reported with other general expenses – by nature. We believe that such an approach offers relative simplicity and flexibility for charities, and minimises the potential for a reliance on comparison ratios. While we recognise the disadvantage of this approach, namely that fundraising may not be separately disclosed, we are also of the opinion that strengthening the governance framework will ensure that this style of reporting is not open to the same degree of abuse.

Governance Institute provides further comments on the draft report on specific matters as detailed below.

Specific comments on the draft report

Fiduciary duties and fundraising

Governance Institute notes that there is some commentary in the draft report concerning the application of fiduciary duties to directors of charities in the context of fundraising. We note that, to date, there has been no specific case law to illustrate how fiduciary relationships might exist in this context. We believe that it would be prudent for this area to be specifically described to avoid any uncertainty that currently exists in this area.

To provide more certainty, **we recommend** the approach outlined in the draft report, including the proposal that the ACNC governance standards be amended to specifically refer to fundraising. We note, for example, that governance standard two could be redrafted to include the charity's fundraising activities as one of the functions in relation to which the charity must take reasonable steps to be accountable to their members.

We note that taking reasonable steps might require charities to implement good governance frameworks and the disclosure of various aspects of their charitable fundraising processes, including, for example:

- strategies and plans for fundraising
- the appointment of appropriate persons to oversee fundraising activities
- related-party transactions, and/or
- ensuring that correct and concise information is publicly published about the charities' fundraising activities.

While our preferred approach is for fiduciary duties to be amended in the governance standards, we also recognise that the governance standards may be repealed. As such, **we recommend** as an alternative that consideration be given to other methods of providing charities with guidance on disclosures concerning their fundraising activities. Such approaches might include:

- amending state and territory legislation to articulate a similar duty for governing bodies, or management committee members
- incorporating fundraising governance reporting into the charity's audit functions, or
- developing a fundraising governance code which outlines good governance practice and disclosures in relation to fundraising activities.

We note that all these activities could provide added transparency and accountability for charities, thereby increasing public trust and confidence in their activities. We believe that it is important to set up standards of practice and provide the lead role of what is expected of charities.

The role of boards in evaluating, monitoring and influencing fundraising activities

Governance Institute notes that boards play a central role in evaluating, monitoring and influencing fundraising activities. As identified above, we believe that governance standards have an important role to play in ensuring that fundraising activities and reporting are appropriately considered by charities and their responsible entities. We also note the importance of providing guidance to charities on which aspects of the fundraising process should be disclosed to ensure that we do not simply impose further reporting obligations on charities without any consideration given to the reason why such information should be disclosed.

Conclusion

Governance Institute retains a strong interest in the final report and looks forward to continuing to support the Australian Centre for Philanthropy and Nonprofit Studies with the work that it has undertaken in this area.

Yours sincerely

A handwritten signature in black ink that reads "Tim Sheehy". The signature is written in a cursive, flowing style with a large initial 'T' and 'S'.

Tim Sheehy
Chief Executive