



Submission on
Charitable fundraising regulation reform –
Discussion paper and draft regulation impact statement

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Introduction

About Australia's not-for-profit medical research sector

The Association of Australian Medical Research Institutes (AAMRI) welcomes the opportunity to provide feedback on the *Charitable fundraising regulation reform* discussion paper.

AAMRI is the peak body for Australia's independent medical research institutes. Together, AAMRI's member institutes account for over 8,000 staff and students, and vary in size from 26 to over 700 staff and students. Most of AAMRI's 42 member institutes are independently registered charities. Some are also/otherwise closely affiliated with a foundation or a hospital-based charity. All members undertake fundraising activities.

Independent medical research institutes are a unique sub-group of the not-for-profit sector. Their primary function is to undertake health and medical research for the ultimate benefit of the community. Consequently, they are primarily staffed by highly specialised researchers, together with executive, management and administrative staff. Their boards of directors are usually entirely volunteer based and include highly experienced leaders from the business sector.

Medical research institutes receive income from Federal Government agencies, state/territory government agencies, philanthropic trusts and foundations, industry (both commercial agreements and charitable sponsorships), and community donations and bequests. The main source of income is through competitive research grants (primarily from the Federal Government, but also from state/territory governments, private foundations and companies), collectively accounting for over \$350 million in revenue for AAMRI's members each year. AAMRI's members obtain an estimated further \$350 million each year from other sources, including over \$100 million in deductible gift recipient (DGR) fundraising income.

AAMRI's members are primarily companies limited by guarantee, with the remainder being established through Acts of Parliament or incorporated associations. As such, in addition to the reporting requirements enforced by funding organisations, they have stringent reporting arrangements set out by the Corporations Act or Acts of State Parliaments, individual constitutions, the Australian Taxation Office, and state/territory-specific legislation for charities.

General comments

AAMRI strongly supports a nationally consistent approach to regulation of charitable fundraising to reduce the administrative burden on charities and uniformly protect donors. Many of AAMRI's members fundraise in multiple states and territories, and the various fundraising legislative and administrative requirements imposed by states and territories are a significant – and unnecessary – compliance burden and cost for our members.

In establishing a harmonised national system of charitable fundraising regulation and reporting, it is imperative that the following be addressed:

- **Activities captured under 'fundraising activities' (for legislative and financial reporting purposes) must be better defined.** AAMRI has major concerns with the current definition of fundraising activities, the proposed exemptions for legislative purposes, and the lack of clarity around the extent of exemptions (e.g. whether they are also exempt from financial reporting).
- **In order for the reform process to achieve its objective of reducing the regulatory burden on charities, it is imperative that state/territory fundraising legislation does not co-exist with the new national legislation.** The suggested division of responsibility for charitable fundraising legislation and reporting between the ACNC and states/territories will further complicate the current system and increase red tape, not decrease it.
- **AAMRI's preferred model for a national system of fundraising regulation is that states/territories refer regulatory powers to the Commonwealth and that the ACNC acts as a one-stop shop for charities, responsible for charity registration, authorisation to fundraise, charity and fundraising legislation/regulation and financial reporting.** The ACNC should have nodes in each state.
- **Any fundraising legislation and reporting requirements need to take into consideration the diversity of the charity sector** (not just the different sizes of entities). In some cases a guideline approach, rather than a one-size-fits-all regulatory approach, is more practical and beneficial. This should particularly be considered for the reporting of financial information on fundraising. Mandating the reporting of fundraising revenue and fundraising costs (both of which

have very unclear and 'rubbery' definitions) is likely to lead to the (legitimate) maneuvering of funding streams and accounts by charities to give the best results. This could potentially waste a lot of time and resources and still not lead to the desired result of improving transparency and informing the public. The reporting of simplistic league tables of fundraising costs versus revenue should also be avoided. Charities differ enormously in their activities and business models, and so direct comparisons of fundraising revenue and fundraising costs without explanatory information is over-simplistic and potentially misleading to potential donors.

- **The proposed pace and order of charity/fundraising reform is a concern.** Regulatory reform of charity fundraising should not occur while there is no statutory definition of a charity. Implementation of a new national system of fundraising regulation should also not take place until state and territory governments have committed to replacing their legislation with that of the national approach.
- **Several AAMRI members have also raised concerns that the discussion paper does not address the large amounts of marketing information that the general public receives from the many charities in Australia.** For example, in the NSW cancer charity segment alone there are over 100 organisations competing for awareness and the donor dollar. Part of the reform of the charity sector should address this problem. The more charities there are, the more money and time is spent on administration. A major overhaul of the charities sector should be a coordinated approach with state and federal governments, the Fundraising Institute of Australia (FIA), Philanthropy Australia and other stakeholders.

Responses to consultation questions

2.1 Is it necessary to have specific regulation that deals with charitable fundraising? Please outline your views.

AAMRI supports the specific regulation of charitable fundraising for the reasons outlined in clause 13 of the discussion paper. However, it should be noted that in some cases (e.g. financial reporting – see response to question 5.2) a best practice guideline approach, rather legislation, might be more appropriate.

2.2 Is there evidence about the financial or other impact of existing fundraising regulation on the costs faced by charities, particularly charities that operate in more than one State or Territory? Please provide examples.

All of AAMRI's 42 member organisations undertake fundraising activities. Because most of AAMRI's members are companies limited by guarantee, they provide audited accounts to ASIC each year. Remaining members are established by Acts of Parliament, so provide detailed annual financial reports to their respective state Parliaments. Currently, each provides these same audited accounts, together with supplementary and duplicative information set out in a different way to their state/territory government for charitable fundraising purposes. The proposed transfer of responsibility for charity financial reporting from ASIC to the ACNC provides an opportunity to remove this unnecessary duplication.

Many of AAMRI's members fundraise in multiple states and territories. This leads to a significant and unnecessary burden on these organisations in several ways:

- **Authorisation to fundraise:** The forms and requirements to obtain and maintain the authority to fundraise vary in each state/territory. Some states require police checks or an explanation of how your fundraising is different from similar organisations that already have a licence. The requirement to get authorisation to fundraise multiple times is a significant (and unnecessary) burden on charities.
- **Annual financial reporting of fundraising activities:** Preparing separate annual financial reports, each with slightly different reporting requirements, to each state/territory also represents an unnecessary burden given that all of these reports cover the same national fundraising activity.¹

¹ One AAMRI member indicated that each state report requires several hours to prepare (on top of the original ASIC report); another member indicated that the annual financial cost of meeting a single state's charitable fundraising reporting requirements was around \$1000. However, it should be noted that AAMRI members have highly qualified full-time staff (not the case for all charities), and these numbers are unlikely to reflect the costs/burden on other charities, or even other AAMRI members.

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- **Fundraising legislation:** Each state/territory has different fundraising regulations, requiring charities to adjust their processes between states/territories. Also, all fundraising staff and volunteers need to be aware of the different legislative requirements in each state/territory, which takes a substantial amount of time and effort.

National standardisation of fundraising regulations, the requirement for a single national licence to fundraise, and the streamlining of annual financial reporting (i.e. a single annual charity financial statement, including fundraising information) through a single body, i.e. the ACNC, would significantly lighten the regulatory burden on AAMRI members.

2.3 What evidence, if any, is available to demonstrate the impact of existing fundraising regulation on public confidence and participation by the community in fundraising activities?

AAMRI members indicated that the majority of individual donors do not ask whether they are authorised charities. However, some trustees do inquire about the tax status of the organisation, and there have been some occasions where donors have asked about the costs of fundraising.

In this regard, medical research institutes might not be representative of the charity sector as a whole, however, as they are primarily large organisations well known for their research work. For example, one member is aware of other charities that receive up to five or more enquiries a week from donors about the costs of fundraising, allocation of funds, allocations of funds by third party fundraisers and donor privacy; satisfaction was expressed by enquirers on hearing that the industry is regulated.

2.4 Should the activities mentioned above be exempted from fundraising regulation?

AAMRI has serious concerns with the proposed definition for fundraising activities and suggested exempt activities outlined in the discussion paper. We recommend more work and consultation around this, as it is fundamental to the regulatory reforms. Clarification is also required around whether annual financial reporting of 'fundraising income' and 'fundraising costs' would include revenue and costs resulting from those activities proposed to be exempt from fundraising legislation. Given that several of the exempt activities outlined are clearly fundraising activities, AAMRI has assumed that the intention is that the cost and revenue of these activities would be included under 'fundraising' for financial reporting purposes.

We have outlined our major concerns in more detail below:

- AAMRI suggests that a distinction be made between donations (which should be excluded from the definition of fundraising activities) and goods and services that are subject to GST (which should be excluded from the definition of fundraising activities).**

The discussion paper proposes that fundraising activities be defined as "any activity that involved the soliciting or receipt of money (whether or not in return for a good or service) or other property primarily for a charitable purpose", with certain exempt activities as outlined in clause 18 of the discussion paper. If taken literally, the current definition would include services contracts or other commercial-style activities that result in receipt of money by a charity (and thus are for a charitable purpose) but which have a clear and equitable market return against any contribution made. It is not appropriate to include such activities under fundraising.

- AAMRI strongly argues that soliciting for government grants should not only be exempt from fundraising regulation, but that it should be specifically excluded from the definition of fundraising activities.**

Medical research institutes (like many other charities and universities) receive a significant proportion of their income from competitive government grants or fellowships. As noted in the discussion paper, these require stringent reporting and regulatory requirements, and there is no evidence of adverse outcomes of these funding sources requiring additional regulation.

The inclusion of applications for government grants in the definition of fundraising activities (albeit exempt from legislation) could have enormous implications on the reported quantum of fundraising costs for medical research institutes and other charities (see question 5.2 below). Attempting to determine the amount of time spent by each of the 100's of researchers in each medical research institute on grant applications (to incorporate into fundraising costs) would be unfeasible. The inclusion of government grants under the 'fundraising' umbrella would also be inconsistent with reporting requirements outlined by the ACNC Taskforce in their discussion paper, *Australian Charities and Not-for-profits Commission: Implementation Design*, where

'fundraising contributions', 'government grants/contracts' and 'all other grants' are separate line items on the income statement of the proposed annual information statements.

Soliciting for government grants (or fellowships) differs significantly in its nature from fundraising activities. Applications for government grants are proposals for funding awarded in a competitive process based on merit and provided for the performance of a defined program of work (grant) or to support the salary of a particular researcher (fellowship). In the case of medical research institutes, government grants are the primary source of income to perform their core business, i.e. health and medical research. Rather than providing government funds directly to medical research institutes, the grant process ensures that the best research and researchers are funded. It is fundamentally different in nature from donations, bequests or fundraising contributions.

Further, under GST legislation, the definition of a gift is in effect a donation that has no expectation of any return or report. Given that competitive grants have to be reported upon, they do not fit this definition.

iii. AAMRI strongly recommends that the soliciting for the following also be excluded from the definition of fundraising activities:

- **funds received from government agencies in a form other than grants**
- **competitive grants from non-government entities, including tax-exempt charities (e.g. Gates Foundation, Cancer Council Australia)**
- **commercial research and development (R&D) funding, and venture capital and angel investments.**

Medical research institutes receive funding from governments outside of grant processes – e.g. funding for the indirect costs of research (including the costs of overheads and research equipment, which are not covered by standard research grants), and one-off funding for infrastructure and buildings. These involve negotiations with government, and are fundamentally different from fundraising activities for donations. Thus, for the same reasons outlined in point ii above, they should be excluded from the definition of fundraising activities.

As noted in the introduction, medical research institutes also receive income through grants from non-government entities, including private foundations and trusts and companies. The majority of these grants are competitive, and for the same reasons outlined in point ii above, applications for these should be excluded from the definition of fundraising activities. There is a case, however, for including the soliciting of 'non-competitive' grants from non-government entities under the definition of fundraising activities (and subject to regulatory legislation), as the regulation of these grants, in some cases, may be less stringent.

Activities involved in raising commercial R&D funding, venture capital and angel investments should be excluded from the definition of fundraising activities as these involve contracts between two parties and are made on the premise that the investor aims to achieve a commercial return on the investment.

iv. AAMRI contends that soliciting of corporate donations, donations from public and private ancillary funds, and member donations to religious organisations should not be exempt from charitable fundraising legislation.

AAMRI does not agree that members of religious organisations are safe from misconduct on the part of a member of the religious organisation involved in fundraising. They are certainly no safer than members of other highly reputable, non-religious charitable organisations. The exclusive exemption of religious organisations is therefore not seen as appropriate.

Corporate donations, and donations from public and private ancillary funds are given in trust for specific purposes that are not necessarily the priorities of the elected government. The donating organisation/fund also receives tax exemptions for these donations. It is important that donations by corporations and public and private ancillary funds are regulated in line with donations by the general public to ensure consistent regulation of charitable giving across the board.

v. AAMRI supports the exclusion of workplace appeals from fundraising regulation, as regulation of such appeals could be a deterrent for their continuance. However, special reference should be made to this form of collecting funds to encourage care and diligence in conducting such a collection.

2.5 Are there additional fundraising activities that should be exempt from fundraising regulation? If so, please provide an explanation of why the relevant activities should be exempt.

Please see question 2.4 (points ii and iii) for fundraising activities that should be excluded from the definition of fundraising activities. It is important to distinguish between:

- a) activities excluded from the definition of fundraising activities (and thus whose associated costs and revenue would presumably be excluded from the financial reporting of fundraising activities); and
- b) activities that fit under the definition of fundraising activities (and thus whose associated costs and revenue would be included for financial reporting purposes) but which are exempt from legislation.

2.6 Is the financial or other effect of existing fundraising regulation on smaller charities disproportionate? Please provide quantitative evidence of this if it is readily available.

AAMRI has no comment, as we are not aware of any members with an annual fundraising revenue below \$50,000.

2.7 Should national fundraising regulation be limited to fundraising of large amounts? If so, what is an appropriate threshold level and why?

AAMRI recommends that some level of regulation should apply to all entities, but that a less onerous level of regulation might be considered for entities with an annual fundraising revenue of less than \$50,000.

The discussion paper contends that smaller scale fundraising, particularly fundraising that uses volunteer labour, is likely to present less risk to the community in terms of loss or fraud. AAMRI does not share this view and contends that anywhere where public monies are received by an organisation there should be some level of legislation in place to protect the donor and donation. Also, limiting legislation to fundraising amounts larger than \$50,000, as proposed, could result in entities contriving to be below the \$50,000 threshold (potentially by setting up multiple small organisations), and could unintentionally encourage an increase in the number of smaller charities. However, AAMRI agrees that it might be uneconomical or burdensome for some small organisations to be subject to the same level of fundraising regulation as larger organisations.

2.8 Should existing State or Territory fundraising legislation continue to apply to smaller entities that engage in fundraising activities that are below the proposed monetary threshold?

No, allowing state and territory legislation and reporting to continue independently of the new national approach will perpetuate the current regulatory burden.

2.9 Should a transition period apply to give charities that will be covered by a nationally consistent approach time to transition to a new national law? If so, for how long should the transition period apply?

AAMRI urges the Treasury to delay the transition to a national approach to fundraising regulation until (a) there is a statutory definition of a charity, and (b) state and territory governments have committed to replacing their legislation with that of the national approach.

AAMRI is concerned about the proposed method of implementation of a national 'harmonised' approach to fundraising regulation outlined in clauses 24 and 25 of the discussion paper.

The discussion paper proposes that "state and territory governments may decide to exempt those charities covered by the national law from state and territory fundraising laws". One of the key purposes for a harmonised national approach to fundraising regulation is to reduce the burden on charities that fundraise in multiple states. A firmer commitment from states and territories is required before transitioning to the new 'national approach'. Failure to do so has the potential to increase, rather than lessen, the regulatory burden on charities, as they comply with a national system as well as individual state/territory regulations.

The discussion paper also outlines potential approaches for implementing the new national fundraising regulations, including “states and territories enacting ‘mirror’ legislation in the same or similar terms as that enacted in a host jurisdiction”. However, there are no provisions to safeguard against states/territories legislating imperfect copies of national legislation.

It is crucial that the implementation of the national approach to fundraising regulation results in a harmonised system of reporting across all states and territories. If each state and territory has different legislation, reporting requirements and reporting forms, then the ‘national approach’ will not have achieved one of its core objectives.

For this reason, AAMRI recommends that the ACNC be responsible for the implementation of the new national fundraising regulations (see response to question 2.10 below).

2.10 What should be the role of the ACNC in relation to fundraising?

In order for the ACNC to be a national one-stop shop for not-for-profit regulation, as intended, it is appropriate that the ACNC take responsibility for all fundraising regulatory functions for the not-for-profit sector. This would include responsibility for:

- charity registration
- charitable fundraising licensing (or banning of organisations where appropriate)
- charity and fundraising legislation and regulation (governance and compliance)
- oversight of annual charity financial reporting obligations (including information on fundraising activities)
- providing educational materials and best practice guidelines
- a publicly available portal on Australian charities, including financial information.

There should be no need to have state/territory legislation or state/territory government charities departments. The states should cede their role to the national regulator.

The ACNC should have state-based nodes to instill the national regulations that sit within national laws. This would be similar to the set up of the Fundraising Institute of Australia (FIA), which is a national body with state-based chapters to provide support locally.

This is the only way to ensure that there is a truly ‘harmonised national approach’ to charitable fundraising regulation and reporting, and that the ACNC achieves its goal as a one-stop shop for not-for-profit regulation.

2.11 Should charities registered on the ACNC be automatically authorised for fundraising activities under the proposed national legislation?

Yes, AAMRI recommends that registration as a charity should automatically authorise an organisation to undertake fundraising activities in all states and territories and to fulfill all reporting requirements via the ACNC.

2.12 Are there any additional conditions that should be satisfied before a charity registered with the ACNC is also authorised for fundraising activities?

No.

2.13 What types of conduct should result in a charity being banned from fundraising? How long should any bans last?

AAMRI supports the ‘light touch’ approach for charity regulation proposed by the ACNC Taskforce in their discussion paper, *Australian Charities and Not-for-profits Commission: Implementation Design*. Non-compliance by charities mostly results from a lack of understanding or a lack of resources. A distinction needs to be drawn between deliberate or gross misconduct/negligence and unintentional negligence or innocent error. Given the educational role of the ACNC, it is appropriate that it has the discretion to either provide guidance on compliance obligations or ban a charity. Circumstances where a charity might be banned from fundraising activities include insolvency, unscrupulous practices, fraud, and misapplication of funds.

There is, however, an important added complication here of determining who is responsible for misconduct – the individual, the charity or third party fundraisers (where applicable). In some cases a charity might not be aware of misconduct by one of its staff. By banning a charity, you are possibly also punishing innocent beneficiaries. This issue requires further consideration.

Consideration should also be given to giving the ACNC the right to impose an administrator to replace management in extreme situations.

3.1 Should the aforementioned provisions of the ACL apply to the fundraising activities of charities?

Yes, AAMRI supports the application of provisions of the ACL to fundraising activities by including relevant provisions in legislation that establishes the ACNC.

3.2 Should the fundraising activities of charities be regulated in relation to calling hours? If so, what calling hours should be permitted?

In principle AAMRI supports the regulation of unsolicited calling hours for fundraising activities in accordance with provisions in the ACL. However, there are some cases where the ACL provisions are not appropriate due to the nature or target market of a fundraising activity, for example, evening fundraising functions and fundraising activities that are deliberately scheduled for week-ends or public holidays (e.g. ANZAC day and Remembrance Day). Either legislation of fundraising calling hours (and face-to-face soliciting) should take such fundraising activities into account, or charities should be able to apply for exemption from the regulations for certain fundraising events.

3.3 Should unsolicited selling provisions of the ACL be explicitly applied to charitable entities? Alternatively, should charitable entities be exempt from the unsolicited selling provisions of the ACL?

Yes, AAMRI supports the application of the unsolicited selling provisions of the ACL to charitable entities.

4.1 Should all charities be required to state their ABN on all public documents? Are there any exceptions that should apply?

AAMRI supports the inclusion of the following on all public documents for charities:

- Name of the charity;
- Contact details for the charity (including a phone number or mail address, recognising that not all people have access to email or the internet); and
- ABN or, alternatively, a statement that the organisation is ACNC registered (or even a specific ACNC registration number).

An ABN (or an ACNC registration number or a statement that the organisation is ACNC registered) would provide assurance that the charity is a legitimate business/charity, and, together with charity contact details, would allow potential donors to find out more about the organisation or raise any concerns with the charity of the conduct of persons involved in fundraising on the charity's behalf.

Including the contact details for the ACNC (including a telephone number or mail address) should not be mandatory, but could be encouraged.

4.2 Should persons engaged in charitable fundraising activities be required to provide information about whether the collector is paid and the name of the charity?

AAMRI supports the provision of the charity's name by a person engaged in charitable fundraising.

However, AAMRI strongly disagrees with the mandatory disclosure of information about whether a collector is paid. The provision of such 'black and white' qualitative information is potentially misleading, misrepresentative, and certainly inadequate for a donor to make an informed decision about donating based on the costs associated with fundraising. Such information provides no information on the total level of fundraising costs, the skills the collector brings to the position, or the level to which the charity uses unpaid volunteers generally in its activities. It also has the potential to

alter the conduct of charities towards using volunteer collectors at the potential cost of charities' fundraising effectiveness.

So that donors can make an informed decision about donating, AAMRI recommends that charities provide their annual reports in a downloadable form on their websites. The ACNC should also include financial information provided by charities on its website. See the response to Question 5.2 for further details.

4.3 Should persons engaged in charitable fundraising activities be required to wear name badges and provide contact details for the relevant charity?

Yes, AAMRI supports the wearing of name badges, including the name of the charity, by persons engaged in charitable fundraising activities. AAMRI also supports the provision of the charity's name, their ABN (or that it is ACNC registered or a specific ACNC registration number), and the charity's contact details (including a telephone number or mail address for those without internet access) by persons engaged in charitable fundraising upon request by a potential donor.

4.4 Should specific requirements apply to unattended collection points, advertisements or print materials? What should these requirements be?

AAMRI suggests that a charity's unattended collection points and print materials should include the name of the charity, its ABN (or that it is ACNC registered or a specific ACNC registration number) and its contact details. However, there may be some issues in requiring this information to be provided in advertisements that are not in a print form (e.g. television and radio commercials and internet flash banners).

4.5 Should a charity be required to disclose whether the charity is a Deductible Gift Recipient and whether the gift is tax deductible?

AAMRI supports the requirement to disclose whether a gift is tax deductible.

4.6 Are there other information disclosure requirements that should apply at the time of giving? Please provide examples.

Some consideration might be given to requiring the provision of information on what activities donations will be spent on upon request by a potential donor.

4.7 Should charities be required to provide contact details of the ACNC and a link to the ACNC website, on their public documents?

While charities might be encouraged to include the details of the ACNC website (and alternative ACNC contact details for those persons without internet access) on their public documents, AAMRI does not endorse this being mandatory. Mandating this would mean that charities are burdened with more compliance obligations than private sector entities, which are not required to provide links to the ASIC website for example. Placing a higher compliance burden on the not-for-profit sector than on publicly-listed companies is seen by AAMRI as inappropriate.

5.1 Should reporting requirements contain qualitative elements, such as a description of the beneficiaries and outcomes achieved?

The ACNC Taskforce has already proposed the optional inclusion of a charity's outcomes in its annual reporting requirements (see *Australian Charities and Not-for-profits Commission: Implementation Design* discussion paper, Question 4). AAMRI supports the inclusion of a charity's outcomes as an optional annual reporting item to the ACNC. Outcomes should be based on all sources of revenue, not just fundraising activities.

A description of beneficiaries is not relevant for all charities. For example, medical research institutes have the potential to benefit all of the community, but the ultimate beneficiaries of research are usually not direct or traceable, and there is often a long lag time (often 10-20 years) before a scientific

discovery benefits the community. So the beneficiaries of medical research institutes are not readily reportable on an annual basis.

5.2 Should charities be required to report on the outcomes of any fundraising activities, including specific details relating to the amount of funds raised, any costs associated with raising those funds, and their remittance to the intended charity? Are there any exceptions that should apply?

AAMRI supports the reporting of charities' annual financial reports (including audited accounts where applicable) on the ACNC's website. Charities might also be encouraged (or required) to make their annual reports available on their websites.

However, AAMRI suggests further consultation on the obligations of charities with respect to fundraising reporting. Neither the current discussion paper nor the recent ACNC Taskforce discussion paper on the ACNC's implementation design clearly defined what financial information will be collected by the ACNC, for what purpose, how it will be used, and most importantly, what and how information will be presented on the ACNC's public information portal.

The financial information collected by the ACNC should be restricted to that necessary to protect the public from fraud and to maintain public confidence in charitable fundraising methods. Before determining whether fundraising revenue and costs associated with fundraising should be included in ACNC financial reports and on the ACNC's web portal, the complications outlined below should be seriously considered.

There is a need for clarification around what should be included in 'monies raised from fundraising activities'. For example, would income from long-term bequests and legacies, and grants from trusts and foundations be counted, or would this just refer to donations received each year? In their discussion paper, *Australian Charities and Not-for-profits Commission: Implementation Design*, the ACNC Taskforce suggested that charities separate income received from 'donations', 'bequests' and 'fundraising contributions' in audited financial reports. How does this align with the suggestion here of providing details of 'funds raised' from fundraising activities?

There are also major issues with the reporting of the costs associated with fundraising activities. It is currently not clear what would be included in the 'costs of fundraising activities'. For example, would this include marketing and public relations agencies working on branding and advertising? This is particularly a concern for medical research institutes, which differ in nature from many other charities, where such branding activities are not necessarily primarily for the purpose of fundraising, but are for the purpose, for example, of elevating the profile of the institute as a place of research excellence to attract prominent research staff, or to improve the recruitment of patients to clinical trials. Also some costs are centralised and not easily allocated across the same revenue categories. For example, if a charity produces 10,000 annual reports, some are used for branding and therefore are of fundraising assistance, but some are informative to governments, agencies, domestic or foreign business partners, and prospective employees.

It is suggested in the discussion paper that soliciting of government grants, corporate donations from public and private ancillary funds, workplace appeals, and member donations to religious organisations be exempt from fundraising regulation (clause 18). However, would the costs associated with these activities be excluded from fundraising costs, and would the funds raised through these avenues be excluded from financial reports of funds raised from fundraising activities (see the response to questions 2.4 and 2.5 for further details)?

Also, even if definitions for fundraising costs were clarified, there is the likelihood that charities would (legitimately) maneuver funding streams and accounting to ensure the lowest quantum of 'costs of fundraising activities'. This could potentially waste a lot of time and resources and not lead to the desired result of improving transparency. Indeed, it has the strong potential to mislead or confuse the public rather than inform them. AAMRI also has concerns about the reporting on the ACNC website of simplistic financial disclosures lacking explanations (e.g. one line fundraising expense/revenue ratios), especially where comparisons are being made between charities. Charities differ enormously in their activities and business models (e.g. medical research institutes are fundamentally different from most other charities) and so direct comparisons of fundraising revenue and fundraising costs without explanatory information is over-simplistic and potentially misleading to potential donors.

AAMRI suggests that rather than prescribing one-size-fits-all, over-simplified, potentially misleading and highly manipulable reporting of fundraising costs that are unlikely to be appropriate to the diverse range of charities, that the ACNC works with the sector to establish best practice guidelines and to

educate the public on the sort of questions to ask charities. Peer and public pressure is likely to result in organisations following guidelines, and will prevent an unnecessary reporting burden on charities and a potential waste of time and resources.

5.3 Should any such requirements be complemented with fundraising-specific legislated accounting, record keeping, and auditing requirements?

AAMRI suggests that reporting requirements be aligned with the ACNC's three-tiered annual reporting system for charities.

5.4 What other fundraising-specific record keeping or reporting requirements should apply to charities?

AAMRI has no suggestions for additional fundraising-specific record keeping.

6.1 Should internet and electronic fundraising be prohibited unless conducted by a charity registered with the ACNC?

AAMRI supports the prohibition of all fundraising activities, including internet and electronic fundraising, unless a charity is registered with the ACNC.

6.2 Should charities conducting internet or electronic fundraising be required to state their ABN on all communications? Could this requirement be impractical in some circumstances?

Yes, AAMRI supports the inclusion of the name of a charity and its ABN (or that it is registered with the ACNC) on a charity's website and electronic fundraising communications.

6.3 Are there any technology-specific restrictions that should be placed on internet or electronic fundraising?

AAMRI has no comment.

7.1 Is regulation required for third party fundraising? If so, what should regulation require?

In principle AAMRI supports the inclusion of third party fundraisers in the legislative requirements of charities outlined in questions 2.13 – 4.7, including application of the unsolicited selling provisions of the ACL.

However, there is a case for a sliding scale here. One possibility for consideration might be that whenever a third party fundraiser is expected to exceed a threshold amount of fundraising income (e.g. \$10,000) that they must have an agreement with the benefitting charity, an "Authority to Fundraise". This would apprise of all legislative requirements and might include a commercial agreement for third party commercial entities or a simple language pro forma for community volunteers. For smaller fundraisers, a standard simple language "Letter of acknowledgement", which would not apprise of all legislative requirements might be more appropriate.

It is important that any agreement between charities and third party fundraisers clarifies the responsibilities and obligations of each party, and under which circumstances and who should be responsible should there be a breach of legislation.

7.2 Is it appropriate to limit requirements on third party fundraising to those entities that earn a financial benefit?

AAMRI suggests that some form of regulation should apply to all entities involved in fundraising, including third party fundraisers that do not earn a financial benefit, in order to protect potential donors. It is noted that volunteers engaged by charities to undertake fundraising activities would be bound by legislative requirements that apply to the charity, thus so too should all third party fundraising entities. Please see the response to question 7.1 for further details.

7.3 Should third party fundraisers be required to register with the ACNC for fundraising purposes only? If so, what are the implications of requiring the registration of third party fundraisers?

Some AAMRI members questioned the benefit and practicality of registering third party fundraisers, particularly for large fundraising events (e.g. Jeans for Genes day, organised by the Children's Medical Research Institute, involves thousands of participating fundraising organisations on the day, including schools, businesses, government departments and community groups). It is likely that the need to register with the ACNC might act as a deterrent for third party fundraisers that do not receive a financial benefit. As long as there were signed agreements between the charity and third party fundraisers (see the response to question 7.1), and the charity had a register of third party fundraisers (which could potentially be audited by the ACNC), then there would not be a need to register third party fundraisers with the ACNC.

Other AAMRI members suggested that third party fundraisers that receive a financial benefit should register with the ACNC. Some went as far as recommending that they should publish the percentage of donations that they retain. This transparency might also create more competition.

7.4 Should third party fundraisers be required to state the name and ABN of charities for which they are collecting?

Yes, AAMRI recommends that third party fundraisers should be bound by the same legislative requirements as charities, requiring them to provide the name, ABN (or that the charity is ACNC registered) and contact details of charities for which they collect funds.

7.5 Should third party fundraisers be required to disclose that they are collecting donations on behalf of a charity and the fees that they are paid for their services?

AAMRI supports the disclosure by third party fundraisers of the charity on behalf of whom they are collecting donations.

However, AAMRI does not support the disclosure of the fees that a third party fundraiser receives for its services. For the same reasons outlined in the response to question 4.2, provision of such information can be highly misleading and is certainly inadequate for a donor to make an informed decision about donating. You might also ask whether the charity should be describing the fees and costs incurred for producing each piece of collateral or advertising intended to raise money. Disclosure of third party fundraisers' fees is not an indication of the total costs of fundraising activities or the level to which the charity uses volunteers generally in its activities. It also has the potential to steer the conduct of charities towards using in-house collectors, at the potential cost of the charities' fundraising effectiveness.

7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?

No, AAMRI does not support the requirement to inform potential donors that paid labour is being used for fundraising activities for the reasons outlined in our responses to questions 4.2 and 7.5. Such limited information on fundraising activities is grossly inadequate if its purpose is to inform donors about the costs of fundraising activities. Paid labour is only one of many costs associated with fundraising.

7.7 Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?

Yes, some form of regulation should apply to all entities involved in fundraising, including private participators, in order to protect potential donors. Please see the response to question 7.1 for further details.

AAMRI members

	ANZAC Research Institute		Menzies School of Health Research
	Baker IDI Heart and Diabetes Institute		Murdoch Childrens Research Institute
	Bionics Institute		National Ageing Research Institute
	Brien Holden Vision Institute		Neuroscience Research Australia
	Burnet Institute		O'Brien Institute
	Centenary Institute		Peter MacCallum Cancer Institute
	Centre for Eye Research Australia		Prince Henry's Institute of Medical Research
	Children's Cancer Institute Australia		Queensland Children's Medical Research Institute
	Children's Medical Research Institute		Queensland Eye Institute
	Florey Neurosciences Institute		Queensland Institute of Medical Research
	Garvan Institute of Medical Research		Schizophrenia Research Institute
	The George Institute for Global Health		St Vincent's Institute of Medical Research
	Hanson Institute		South Australian Health and Medical Research Institute
	Heart Research Institute		Telethon Institute for Child Health Research
	Hunter Medical Research Institute		Victor Chang Cardiac Research Institute
	Kolling Institute of Medical Research		Walter and Eliza Hall Institute of Medical Research
	Lions Eye Institute		The Wesley Research Institute
	Ludwig Institute for Cancer Research		Western Australian Institute for Medical Research
	Mater Medical Research Institute		Westmead Millennium Institute
	Mental Health Research Institute		Women's and Children's Health Research Institute
	Menzies Research Institute Tasmania		Woolcock Institute of Medical Research