



THE
AMANDA
YOUNG
FOUNDATION

The Amanda Young Foundation Limited
ACN 103 557 160
PO Box 8024
Perth Business Centre, WA 6849
Telephone: 08 9227 4237
Fax: 08 9328 3345
Web: www.amandayoungfoundation.org.au
Email: info@amandayoungfoundation.org.au

31 March 2012

The Manager
Infrastructure, Competition and Consumer Division
Treasury
Langton Crescent
Parkes ACT 2600

Via email: NFPReform@treasury.gov.au

Dear Sir

**COMMENTARY AND OBSERVATIONS CONCERNING THE CHARITABLE
FUNDRAISING REGULATION REFORM DISCUSSION PAPER (“THE PAPER”)**

Introduction and Background Information

As part of a consultative process you have requested comments and responses from interested parties to the issues raised in the Paper concerning the establishment and operation of the Australian Charities and Not-for-profits Commission (“ACNC”)

By way of background I am a volunteer director of The Amanda Young Foundation Limited (“the Foundation”) with responsibility for amongst other matters, corporate governance and administration. I am a retired Chartered Accountant and a former partner in the international accounting firm Price Waterhouse and consider myself appropriately qualified and experienced to comment on the issues raised in the Paper.

It is important to note that the views expressed in this letter are my personal views and not necessarily the views of the Foundation or its other directors.

To place into context my comments I advise the Foundation was originally established as a charitable trust in 1998 following the tragic death of Amanda Young from meningococcal septicaemia at only 18 years of age. As part of a rationalisation of the operating structure the original trust was vested in 2008 and all activities are now conducted through The Amanda Young Foundation Limited, a company limited by guarantee.

The objects of the Foundation are set out the Company’s Constitution and they are primarily associated with promoting the prevention, control and awareness of meningococcal disease through awareness raising and education activities within the community and with health professionals.

Registered Office: 60 Stirling Street, Perth, Western Australia 6000
Donations to The Amanda Young Foundation Limited are tax deductible

In addition the Foundation provides funding for relevant medical research and encourages increased research into meningococcal disease. The charitable objects of the Foundation also include the provision of support to survivors of meningococcal disease and their carers. The Foundation also seeks to fund, support and encourage through scholarships, bursaries, conferences, workshops, camps and other means determined appropriate, the development of young people into Western Australia's future leaders.

The fund raising and operational activities of the Foundation at this time are restricted to Western Australia.

The Foundation has endorsement from the Australian Taxation Office as a Deductible Gift Recipient ("DGR") and as a consequence donations to the Foundation over \$2 each are tax deductible to Australian resident taxpayers. As a registered charity the Foundation's activities are not subject to income tax.

In addition the Foundation is the holder of Charitable Collections Licence 20367 and is required to comply with the provisions of the Charitable Collections Act administered by the Department of Consumer & Employment Protection ("DOCEP") in Western Australia. Under its licence conditions the Foundation is required to file with DOCEP its audited financial statements and other annual returns with that department by 31 October each year.

The Foundation is a public company and subject to the provisions of the Corporations Act. Its financial statements are subject to audit each year. The Foundation has adopted corporate governance principles similar to those required for Australian Securities Exchange ("ASX") listed companies. The Foundation lodges its audited financial statements to 30 June each year with the Australian Securities and Investments Commission ("ASIC") by 31 October each year.

Being a company limited by guarantee and established for not for profit charitable purposes, the Foundation is precluded from and does not pay dividends. No fees are paid to the board of directors who all act in a voluntary capacity.

The Foundation's activities are generally all organised and undertaken by unpaid volunteers who serve on various committees. In a normal year excess of eighty volunteers work in one way or another on the various projects and fund raising initiatives.

The exceptions are the employment of a part time executive and administration officer, a part time education and awareness coordinator, a pool of hourly rate paid health promotion officers and a part time survivor support case manager. The total annual wage cost is approximately \$150,000.

The Foundation currently has accumulated funds of approximately \$325,000 built up over 13 years of volunteer effort and now has annual income in the region of \$235,000 comprising the following items;

Profit on charity ball after costs	100,000
Donations	45,000
Garden fete program	40,000
Interest	15,000
Grants and sponsorship	35,000
	<hr/>
	235,000

Commentary on Proposal Issues

Materiality, Costs, Reach and Need for ACNC

Unfortunately the Paper does not provide any information as to the likely number of charities that will be required to register and comply with the envisaged ACNC requirements. It is also silent on the likely cost of establishing and maintaining the ACNC, the source of that funding, the accountability of the ACNC, the checks and balances proposed to monitor its performance and continued operation and whether or not any fees or supervisory levies will be imposed on those requiring to register.

The Paper is full of “motherhood statements” about transparency, accountability and perceived shortcomings in the charity sector which may or may not be capable of substantiation. Whilst it may not be the most efficient, the sector nevertheless does deliver services and resources to community groups in a far more effective manner than could be provided by Government primarily because of the enormous unpaid effort of volunteers.

I note in passing that the Australian Taxation Office currently lists 18,000 DGR endorsed entities and 10,700 DGR funds, authorities and institutions. The vast majority of these DGR authorised entities, funds, authorities and institutions would appear to the writer to be very small.

It is suggested in the Paper that *“to reduce the compliance burden on charities, a national approach to fundraising regulation should not duplicate existing State and Territory fundraising regulation. As outlined above, national fundraising laws are proposed to apply only to charities that raise funds of an amount that exceeds the proposed \$50,000 threshold, but not to other not-for-profit entities or to entities that do not meet the definition of ‘charity’.*

Accordingly, State and Territory governments may decide to exempt those charities covered by the national law from State and Territory fundraising laws.

It is not clear from the Paper if the States and Territories have agreed to repeal their regulatory requirements. There should not be the introduction of a national approach to fundraising regulation without the repeal and abolishment of State and Territory fundraising requirements as all that will result is more administration, regulation and red tape.

One of the reasons stated for the introduction of a national regulator is to remove the need for charities operating in multiple states from having to comply with reporting and regulatory requirements in multiple states. Perhaps only charities that have reporting and regulatory requirements in multiple states should be required to comply with ACNC requirements.

From a cursory review the vast majority of the DGR authorised entities, funds, authorities and institutions referred to above appear unknown to the writer or could be considered very small. Perhaps the materiality requirement for compliance with ACNC requirements could involve both a more substantial revenue and net asset threshold.

Annual revenue or donations of \$50,000 is not a particularly large amount and if one of the primary objectives of the ACNC requirements is to avoid “rip offs” of donors then perhaps the threshold should be significantly increased. Mum and Dad donors donating up to \$100 may be duped from time to time, but anyone making a substantial donation invariably undertakes some due diligence prior to making the donation or is aware of the need for the donation and the bona fides of the organisation being supported.

There is a degree of self monitoring within the charity sector that is far more effective than that likely to be achieved by the ACNC. For example if another charity was established in Western Australia or even Australia for that matter that was seeking donations for promoting the prevention, control and awareness of meningococcal disease, research into the disease and support to survivors of the disease and their carers then within a very short time we would become aware of their activities, make contact and assess their bona fides. We would contact the existing regulatory authorities if we had any concerns about the activities of any new “charity” entrant into the sector that we and other known foundations throughout Australia are servicing. Not only do we monitor what is happening in our sector but specialist medical professionals also monitor what is going on. I am sure the same situation would apply in all other mainstream charities.

Given the foregoing it is difficult to comment on the need for and effectiveness of the ACNC and one could be excused for concluding it is only another level of bureaucracy and red tape being introduced to address perceived issues that could in fact be addressed without the need for yet another Government regulatory authority.

In the context of the costs of establishing and maintaining the ACNC one can only speculate that they are likely to be in excess of the amounts potentially being ripped off by unscrupulous scammers. One must question the cost/benefit of establishing the ACNC in this context.

If the ACNC must be established, in terms of materiality may be the ACNC regime should be directed to the “big end of town”. In this regard perhaps the donation threshold should be \$1,000,000 and a net asset threshold of a similar amount. To the extent smaller charities consider there are perceived benefits from being registered with the ACNC they should have the capacity to opt in.

Transparency and Reporting

In the Paper is stated that “The establishment of a public information portal will improve transparency within the sector as the public would have more readily accessible information about the activities of charities. Improved transparency is likely to reduce the need for more prescriptive regulation of fundraising activities, as the public will be in a position to monitor fundraising activities of charities, reducing the need for Government intervention.

The requirement to register and to make information about a charity’s finances publicly available is similar to the requirement for companies to register with the Australian Securities and Investments Commission and to make information available to the public via a publicly accessible register. This approach provides for robust public accountability and minimises or reduces additional costs.

As part of its broader reporting framework, the ACNC also is expected to provide opportunities for charities to disclose non-financial information about their entity and fundraising activities. This may provide adequate scope for charities to describe the positive outcomes achieved through the use of donated funds.

Many charities, like the Foundation, conduct their operations through companies limited by guarantee and as such they are already registered with the ASIC and make information available to the public via a publicly accessible register. The financial statements and accompanying Directors’ Report filed with ASIC and DOCEP also already provide an opportunity for charities to disclose non-financial information about their entity, fundraising activities and to describe the positive outcomes achieved through the use of donated funds. What is being proposed appears to be merely an unnecessary duplication of what is already being provided.

Implicit in the whole ACNC concept is the premise that information is not currently available and that donors are somehow unable to access information about a charity prior to making a donation. This is not the case for any charity of any substance seeking donations from the public in that they will invariably maintain comprehensive web sites that include far more information than that envisaged in any filings with the ACNC.

For an organisation of the size of the Foundation I am of the view the existing regulatory framework through the ASIC and DOCEP filings is more than adequate. In our case it is difficult to see how the establishment of the ACNC will do anything but add additional costs, administrative and reporting obligations for no perceived benefit.

Internet Donations

In connection with internet and electronic fundraising the Paper states “Due to the higher risks posed by internet and electronic fundraising, it is proposed that fundraising over the internet for charitable purposes be prohibited unless an entity is registered with the ACNC. This is proposed mainly due to the authenticity issues associated with internet and electronic fundraising, and the potential for these technologies to be utilised for large scale scams. It is also proposed that all charities engaging in electronic fundraising must state their ABN in all communications with members of the public.”

This proposal all sounds terrific in theory but I do not consider the proposal realistic or practical and it will not prevent scammers from establishing sites indicating they are registered with the ACNC and quoting ABN numbers. All it will do is prevent legitimate charities operating under the ACNC registration threshold from receiving donations via the internet. Perhaps an alternative is to approach it from the banking side and require the banks to ensure as part of their account opening procedures that all charities have DGR status and hold the applicable State Charitable Collection Licence prior to opening any accounts. Along the same lines the credit card companies could be required to be satisfied as to the DGR status and the applicable State Charitable Collection Licence status of all entities establishing internet credit card payment arrangements for the collection of donations.

Despite the regulatory framework and requirements imposed by the ASIC, the ASX, APRA and the Accounting Bodies in promulgating Accounting Standards we continue to see company collapses and investment scheme failures. To suggest that the failure by a charity or purported charity to quote an ABN will allow the “ACNC to quickly take action to warn the public that unauthorised fundraising activity is taking place” is somewhat naïve and will be ineffectual in preventing losses. The stable door is invariably left open and the horse has bolted before these regulatory authorities react and there is no reason to expect the ACNC will be any different.

Third Party Fundraising

I advise the Foundation does not engage paid third parties to assist with its fundraising activities. As an aside I wish to advise that as someone who supports a number of charities I always make direct donations to the charity and refuse to respond to fund raising requests sought from unsolicited telephone calls. I am concerned at the level of costs and commissions charged by third party fund raisers and I am of the view the some form of regulatory and disclosure regime should be in place dealing with third parties and agents.

The proposal that “*third party fundraisers be required to identify themselves as third parties who are collecting donations on behalf of a charity, as well as to disclose the amount of the donations that will ultimately be received by the charity for which they are collecting*” has considerable merit and is supported as I concur “*there is potential for third party fundraisers to misrepresent themselves in this area*”.

I am of the view third party fundraisers should be required to register with the ACNC for fundraising purposes and provide an annual audited report on their activities including providing summaries of gross funds raised, costs reimbursed by the charities, commissions and costs incurred and net amounts actually paid to the charities. Again there should be a significant increase in the threshold for registration requirements.

Conclusion

In summary I am of the view the establishment of the ACNC will do little but add a further layer of administrative cost and regulatory burden for little or no benefit to the Foundation and others operating at the “small end of town”.

Should you have any queries concerning the matters raised in this letter or require clarification on any issue please do not hesitate to contact me. As a volunteer I do not work from the Foundation office and I can be contacted via email at hassen@amandayoungfoundation.org.au or via my mobile telephone number 0418 947 544.

Yours faithfully



John Hassen
Volunteer Director