



- ADDING TO YOUR MINISTRY

Add-Ministry Newsletter - July 2017

Crowdfunding and charities

Crowdfunding is an increasingly common method of on-line fundraising for individuals, businesses, not-for-profits and charities. There are commonly three parties to a crowdfunding activity: -

- The initiator – the person who is seeking crowdfunding for a particular project or organisation;
- The organiser – the organisation that provides the on-line facility for a crowdfunding arrangement. This is commonly a commercial business; and
- The donor – the person or organisation who is making the crowdfunding contribution.

There are four different types of crowdfunding, each with its own strategy to attract funding and each having potentially different tax consequences for the parties involved: -



- Donations-based crowdfunding is where a donor makes a donation to the project without anticipating anything in return.
- Reward-based crowdfunding is where the promoter provides goods, services or rights to the donor in return for their payment.
- Equity-based crowdfunding is where the donor is buying a share in an activity with the expectation of receiving the right to future profits, voting rights and potentially a return of capital. The Federal Government is currently finalising an appropriate legal framework for proprietary and public companies to guide in such circumstances.
- Debt-based crowdfunding is where the donor lends money to the promoter or a group of promoters who in return agree to pay interest and repay principal on the loan.

Charities and crowdfunding:

ACNC has now released guidance relating to crowdfunding and charities. A precis of their paper includes emphasizing the need for a charity to do its homework before committing to such a matter. It is important to look carefully at the proposed organiser to make themselves familiar with the cost and conditions in regard to the crowdfunding activity. It is also important to take into account the reputation of the charity and considering whether there are better ways to approach fundraising.

An important issue is to consider what happens to the funds if a nominated crowdfunding target is not reached? Will the project fail or is there some alternative subsidiary project in mind? It is important in putting forward a



proposal for crowdfunding that there needs to be a clear explanation about what happens to the money. The charity will retain responsibility for what is happening so it is important to be careful about your reputation as a charity.

There are legal obligations to be considered. There are obligations under the Charitable Collections Act of WA and those obligations may extend to other States and Territories. If the fundraising crowdfunding is a national programme going beyond WA's boundaries there may be an obligation to have a fundraising licence in each State and Territory.

If an individual is the initiator of the crowdfunding project on behalf of a charitable organisation, the initiator needs to give careful consideration to what their obligations are under the various taxation laws. The question arises as to whether any donations made represent income to the initiator and therefore become a part of the initiator's taxable income. There is also the question of whether there are GST obligations, depending on whether it is a donation of cash or an acquisition of goods.

What seems to be a wonderful idea free of regulatory obligations is an issue where careful forethought is required.

Charities and Consumer Law: -

We had hoped that the review of the Australian Consumer Law (ACL) would provide a way of reducing regulatory obligations for charitable fundraising in Australia. You will be aware that fundraising by charitable organisations is subject to fundraising legislation in the various States and Territories. The relevant regulatory body in Western Australia is the Charitable Collections Committee with what was Department of Commerce; (now the Department of Mines, Industry Regulation and Safety). Regrettably the final report of this review has not presented any positive way forward. We quote the CEO of Community Council of Australia, David Crosby, "The only positive in the ACL Review was that it acknowledged charities exist and guidance was needed". So the regulatory nightmare continues.



Red Tape Reduction in the ACT: -

The ACT Government and the ACNC have reached an agreement which enables charities in the ACT to report direct to ACNC and no longer have an additional obligation to report to the ACT. From 1 July 2017 a charity registered with the ACNC that undertakes fundraising in the ACT will no longer need a Charitable Collections Licence in the ACT. The matter will be covered by their submitting their Annual Information Statement to the ACNC.

"True & Fair" Financial reporting under the new Associations Act : -

For financial years ending on or after 30 June 2018, associations with revenue greater than \$250,000 are obliged to prepare financial statements that give a true and fair view of the financial position and performance of the association and comply with the accounting standards. What does "True & Fair" mean?

There is no statutory definition but guidance is provided by the UK Financial Reporting Council. They suggest that professional judgement is required. Where a choice of accounting policies is available under the accounting standards, choose the most appropriate in the circumstances. You should establish accounting policies if not specifically covered by the standards or where the standards are ambiguous. Judgements should be objective and supported by evidence especially on valuation issues. You should consider what is relevant or significant to the intended recipients of the financial statements and give

sufficient additional information to help the reader understand the financial position and performance. In short you have to think about the content of your financial statements prepared in accordance with the relevant accounting standards and make them understandable to the reader.

This may be a big change for many associations who have prepared special purpose financial statements that have previously only complied with a few accounting standards and have not previously considered "True & Fair".



For medium and large sized associations that are registered charities with the ACNC, you have already been required to use the "True and Fair" concept. However the ACNC has only required compliance with six accounting standards. As an association you are now required to comply with all relevant accounting standards.

Consult with a professional accountant or your auditor to see how the content of your financial statements may change and which accounting standards are now relevant to your particular association.

R J Campbell, Australian Audit

Changing Auditor under the Associations Act: -

Under the old Associations Act, you could easily change auditor at your next annual general meeting.

Under the new Act, an auditor appointed at a general meeting holds office until the reviewer or auditor dies, becomes an insolvent, ceases to be qualified for appointment, is removed from office; or resigns from office.

Changing auditor requires communication with your existing auditor. You may want a fresh approach to the review or audit of your association. You should communicate this to your existing auditor who may choose to resign to allow a new auditor to be appointed or develop a new audit approach that satisfies your concerns. However, if your existing auditor does not wish to resign, you may wish to consider removal. The new Act accords the currently appointed auditor rights under section 89 of the Act. A reviewer has the same rights as an auditor.

Removal of an auditor must be approved at a general meeting of members with 2 months notice. A copy of the notice must be given to the auditor or reviewer and the Commissioner for Consumer Affairs as soon as possible. An auditor may make representations to the management committee who must pass a copy to members at least 7 days before the general meeting. The auditor is allowed to attend and address the members before the vote on the resolution to remove. Such a process may cause considerable upheaval.



You may wish to consider limited term appointments of auditors which contractually require the auditor to resign at the end of the defined period.

You should also note that an auditor of an existing incorporated association immediately before the commencement day (1 July 2016) is regarded as having been appointed by the incorporated association under the new Act (Section 206).

We urge you to talk to your currently appointed auditor if you are thinking of changing auditor. There may be an alternative that leads to a better outcome for all concerned than removal.

R J Campbell, Australian Audit

Common Reporting Standard (CRS) and Not-for-profits (NFP): -

The CRS is a single global standard for the collection, reporting and exchange of financial account information of foreign residents on an annual basis. The requirement is for Financial Institutions to collect and report Financial Account information. Under CRS some NFPs will be Financial Institutions and may have obligations to report to the ATO. This new reporting process extends to any charity that is a Financial Institution even though it is not subject to income tax obligations. It is a process to protect Australia from money laundering and terrorist funding.



Even if your NFP is not a Financial Institution it may be asked by other entities for self-certification. Self-certification will require Financial Institutions to ask their Financial Account holders a series of questions about their residence and status for tax purposes.

The NFP will be a Financial Institution if 50% or more of the NFP's gross income, in the last three calendar years, is derived from investments and at least some of the NFP assets are managed by an external investment manager.

If the NFP is a Financial Institution it must determine if it has any Financial Accounts. This is a special term for CRS and means any Debt or Equity interests in the NFP. Debt interests are entities the NFP has borrowings from. Equity interests are entities or beneficiaries who will receive grants or distributions from the NFP. The self-certification obligations above will apply to the NFP.

The NFP that is a Financial Institution must report to the ATO for the period 1 July 2017 to 31 December 2017 details of their Financial Accounts holders that are from foreign jurisdictions.

If your NFP entity qualifies as a Financial Institution and is sending money overseas either directly or through another entity then these new rules will apply to you. More information is available through the internet at *Not-for-profits and the Common Reporting Standards*.

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