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2 April 2012

Manager
Consumer Policy Unit
Infrastructure Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: NFPReform@treasury.gov.au

Sent by email and postal letter

Dear Manager,

This letter outlines the Australian Dental Association Inc. (ADA)'s submission to the Department of the Treasury for it to consider in its Discussion Paper and draft regulation impact statement on charitable fundraising regulation reform ("the Discussion paper"). The Discussion Paper seeks comment on developing a framework for a nationally consistent approach to charitable fundraising regulation.

The ADA is the peak national professional body representing more than 13,000 dentists and dental students across both the public and private sectors. The primary objectives of the ADA are:

- To encourage the improvement of the oral and general health of the public and to advance and promote the ethics, art and science of dentistry, and
- To support members of the Association in enhancing their ability to provide safe, high quality professional oral health care.

The ADA is providing comment because the Government states that it intends to extend regulations relating to fundraising from charities to apply similarly to not-for-profits (NFP). The ADA is a Professional Association, a NFP, and therefore it is in this capacity that it makes comments.

While the ADA supports fundraising regulation and accepts that a nationally consistent approach to regulation of charitable fundraising, it provides the following responses to the Discussion Paper's questions:

Defining the scope of regulated activities

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

- A. Yes. Specific regulation will create a nationally uniform platform and thus help overcome issues that arise for charities that operate in a number of Australian jurisdictions.

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.

- A. The ADA believes that having a national fundraising regulation, drafted appropriately, should reduce the regulatory burden and costs on those charities that operate in more than one State or Territory. Any regulation created should ensure this.

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?

- A. Nationally consistent standards would provide the public with greater confidence that charities are acting within the legal boundaries. A national approach would also clarify to charities their obligations, enabling them to operate efficiently.

The ADA agrees with the Discussion Paper's outline that the Government's approach to regulating fundraising activities would be that such regulation be applied only to those activities and entities that are required to be regulated and thus exclude others to avoid imposing unnecessary administrative costs and thus reduced beneficiary benefits/costs.

2.4 Should the activities mentioned be exempted from fundraising regulation?

- A. The ADA agrees that the following activities mentioned in the paper should be exempted from funding regulations:

- Soliciting for government grants;
- Corporate donations or donations from public and private ancillary funds;
- Workplace appeals for assistance for colleagues and their families;
- Donations to religious organisations from their own members; and
- Additionally, fees such as member subscriptions or membership fees (particularly for Professional Associations).

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.

- A. No comment.

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.

- A. No comment.

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

- A. The ADA's view is that the annual fundraising of up to \$50,000 by a single entity or group of closely related organisations is appropriate.

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?

- A. The ADA's preference is for a national approach to be applied and that there is minimal overlap or separation of areas subject to State/Territory regulation. This will minimise confusion and costs of compliance.

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?

- A. Depending on the nature of the final regulatory framework, the transition period should be appropriately framed to allow for charities to familiarise themselves with their obligations and to make the necessary internal arrangements. With this in mind, the ADA tentatively recommends a minimum of 6 months.

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

- A. The ACNC should perform its educative/compliance/enforcement/registration functions in the area of fundraising.

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

- A. Yes.

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

- A. No.

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

- A. Other than the paper's suggestion that the ACNC would issue bans in cases of insolvency or evidence of significant wrongdoing in the course of fundraising, bans should also be imposed where there is behaviour on behalf of the charities that amounts to continual and persistent breach of material regulations.

Regulating the conduct of fundraising

3.1 Should the aforementioned provisions of the Australian Consumer Law (ACL) (misleading or deceptive conduct; unconscionable conduct; false or misleading representations; harassment and coercion) apply to the fundraising activities of charities?

- A. Yes.

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

- A. The existing permitted calling hours under section 74 of the ACL are adequate:

- Monday to Friday – from 9am to 6pm; and
- Saturday – from 9am to 5pm.

- Dealers are prohibited from approaching a person at any time on a Sunday or a public holiday.

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?

- A. Yes, provisions under the ACL relating to unsolicited selling should explicitly apply to charitable entities.

Information disclosure at the time of giving

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

- A. While the ADA supports the transparency of charities stating their ABN on public documents, the focus should be more on documents that pertain to fundraising activity. The ADA is indifferent to this requirement as long as the charity can be identified.

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?

- A. Yes. This disclosure should be applied as well as details of the basis on which they are paid (commission or otherwise).

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

- A. Yes. Public certainty would be created.

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

- A. The charity's ABN, option to contact the ACNC, and a website link to see further information of how the fundraising monies will be used.

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

- A. Yes as this would further encourage potential donors to donate monies and clarify to donors the worth of the donation.

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

- A. No comment.

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

- A. Yes. These details should be included at least on the documents that relate to fundraising.

Information disclosure after the time of giving

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

- A. The ADA agrees that while measures to increase transparency and accountability regarding the outcome of fundraising campaigns may not necessarily fully inform donors' decisions at the time of giving, they can provide a general level of confidence in the sector.

The ADA notes that the Discussion Paper states that the Government will consider reporting requirements in the context of broader ACNC reporting requirements and the need to be proportionate to the risks and the amount of funds involved. Reporting requirements also need to consider any additional costs they impose on charities.

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?

- A. The ADA believes this should occur provided that the level of detail is appropriate to the size of the charity. Naturally, charities that raise amounts of money under the minimal threshold will not be required to report.

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

- A. No comment.

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

- A. No comment.

Internet and electronic fundraising

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

- A. The ADA queries the extent to which the ACNC can ensure this proposed restriction will be complied with and the sanctions that could be applied to address breaches.

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?

- A. Please see response to 4.1. Furthermore, considering the relative ease in which electronic templates can be developed, the ADA supports requiring charities' ABN to be stated in main communications (such as websites and email correspondence).

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

- A. Provided that the relevant disclosures are provided which can verify the bona fides of a charity or those they employ to fundraise on their behalf, there should not be any technology-specific restrictions.

In the case of those that donate on an ongoing basis – such as providing consent for regular credit card payments – the regulation should ensure that there are straight forward, easy ways for donors to no longer participate (or ‘opt out’) if they wish.

Fundraising by third parties on behalf of charities

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

A. See response to 7.3.

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

A. Yes, as the potential conflict of interest is most evident for these entities. The profit motive could tempt such entities to engage in practises that mislead and/or cause a nuisance to those subject to their activities.

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?

A. The ADA supports requiring third party fundraisers to register with the ACNC to allow the ACNC to take action directly against them for breaches of fundraising laws. The ADA notes however, that some third party fundraisers may not themselves be charities and so the scope of the ACNC’s authority may have to be widened to accommodate these entities.

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

A. Third party fundraisers should be required to state the name and to allow for the option to access the ABN of those charities; or at least have it available to be accessed.

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?

A. Yes, provided this is done as directly as possible and in conjunction with a reference to where this information can be gathered (such as a website or telephone number). Upfront disclosure is encouraged only to provide further transparency and bolster potential donors’ confidence in the third party/charity.

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

A. See response to 7.5.

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

A. While the ADA acknowledges the Discussion Paper’s point that:

“the involvement of many private participators in charitable fundraising is to promote their public profile as socially responsible entities, such involvement is likely to present less chance of undesirable conduct given the potential reputational harm to the entity if they engage in fraudulent or deceptive conduct”,

The ADA believes that a national regulation for these entities should also be made because, as the paper outlines, the registration, reporting, disclosure and conduct requirements that are triggered differ between jurisdictions.

Conclusion

The ADA supports the introduction of a national regulator for the charities and NFP sector, the ACNC. It supports the aims of the regulator to be ultimately a one-stop shop for charities and NFPs as well as the public to access information on this sector. The development of a national framework for fundraising must be done in a way that generates the efficiencies that are hoped would arise. Adopting a national approach which minimises duplication of reporting requirements and outlining clearly what information must be disclosed when fundraising will provide clarity on charities' obligations while at the same time providing greater public confidence in the activities of fundraisers.

Should further explanation or detail be required please contact the ADA office at 02 9906 4412 or email to ceo@ada.org.au.

We welcome the Department of the Treasury's consideration of the ADA's views.

Yours sincerely,

Dr Karin Alexander
Vice President