
Response to the Discussion Paper on Charitable fundraising regulation reform

Prepared by BoysTown



BoysTown

Fresh start.
New hope.

Authorised By:

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About BoysTown

BoysTown is a national organisation and registered charity which specialises in helping disadvantaged young people and families who are at risk of social exclusion. Established in 1961, BoysTown's mission *is to enable young people, especially those who are marginalised and without voice, to improve their quality of life*. BoysTown believes that all young people in Australia should be able to lead hope-filled lives, and have the capacity to participate fully in the society in which they live.

BoysTown currently provides a range of services to young people and families seeking one-off and more intensive support including:

- Kids Helpline, a national 24/7 telephone and on-line counselling and support service for five to 25 year olds with special capacity for young people with mental health issues;
- Accommodation responses to homeless families and women and children seeking refuge from Domestic/Family Violence;
- Parenting programs offering case work, individual and group work support and child development programs for young parents and their children;
- Parentline, a telephone counselling service for parents and carers in Queensland and the Northern Territory;
- Paid employment to more than 400 young people each year in supported social enterprises to assist their transition to mainstream work;
- Training and employment programs that skill approximately 6,000 young people each year, allowing them to re-engage with education and/or employment, and
- Response to the needs of the peoples of the remote Indigenous communities of the Tjurabalan in Western Australia.

BoysTown is constituted as a Public Company Limited by Guarantee. Our organisation has its own independent income derived from an active and national fundraising program including the BoysTown Charitable Art Union, corporate sponsorships, work-place giving programs, donations and bequests. Approximately 60% of BoysTown's income is derived from this fundraising program totalling \$50 million. The remainder of our income is comprised of Commonwealth and State grants and fee for service activities. We place great importance on our independent fundraising capability as it allows the organisation to deliver high impact services by supplementing Government funding as well as initiating innovative services in response to the needs of young people and their families in areas where Government funding has been traditionally limited. Such services include BoysTown's Domestic Violence Program and the national telephone and online counselling services for children and young people (Kids Helpline).

General Response

BoysTown strongly supports the need for national standardised fundraising legislation and regulation. It is estimated that to meet disparate State and Territory legislative and regulatory application and reporting requirements including those associated with the various State Collections Acts for BoysTown's ten annual Charitable Art Union draws, our organisation expends at least \$174,000 annually (refer to Appendix 1). The majority of this expenditure is consumed in administrative staff time. As noted in the Discussion Paper the States and ACT have highly inconsistent definitions in relation to fundraising increasing the complexity of the fundraising process. These funds could be better spent in services to our client groups. Consequently we believe the resolution of

this issue via the introduction of uniform legislation and regulation is fundamental to reducing 'red tape' that distracts NFPs from their primary purpose.

The most effective way to standardise current legislation is for the Commonwealth Government to take full legal responsibility for the regulation of national fundraising activities particularly those involving internet and electronic activities.

Comment on Specific Provisions:

Chapter 2: Defining the scope of regulated activities

2.1. Is it necessary to have specific regulation that deals with charitable fundraising?

It is our view that the standardisation of Commonwealth, State and Territory legislation and regulation governing fundraising activities is a much needed and necessary reform for the NFP sector. It is likely that this reform will significantly reduce the red tape currently constraining the operations of NFPs particularly those that provide national services and consequently are engaged in fundraising activities across States and Territories.

The BoysTown Charitable Art Union is the major source of funding for our services. To operate this Charitable Art Union and other fund raising activities BoysTown needs to comply with different State based legislation and regulations. There are inconsistencies between each State in relation to their respective legislation requirements as well as differences between legislation relating to Charitable Art Unions and fundraising within singular State jurisdictions. Reporting and compliance standards also vary and are contradictory between States. Registration of Not for Profit organisations with the Australian Charities and Not for Profit Commission should be sufficient accreditation to operate fundraising activities across States without the need for individual registrations in each State as is currently required.

Furthermore, current Commonwealth and State based legislation does not provide a consistent framework for online fundraising. There is a multiplicity of inconsistent and overlapping legislation governing this activity. For example BoysTown operates and advertises its on-line fundraising in compliance with:

- The Queensland Government's Charitable and Non-Profit Gaming Act 1999 (Category 3); Charitable and Non-Profit Gaming Regulation 1999; Collections Act 1966; Charitable Funds Act 1958; Collections Regulation 2008;
- The Victorian Government's Gambling Regulation Act 2003 and the Gambling Regulation Regulations 2005; The Fundraising Act 1998; Fundraising Regulations 2009;
- The New South Wales Lotteries and Charitable Art Unions Act 1901; NSW Lotteries and Charitable Art Unions Regulation 2007; Charitable Fundraising Act 1991 No 69; Charitable Fundraising Regulations 2008;
- The WA Charitable Collections Act (1946); Charitable Collections Regulations 1947;
- SA Collections for Charitable Purposes Act 1939;
- The Australian Capital Territory Lotteries Act 1964 ;
- The Federal Government's Interactive Gambling Act 2001; Interactive Gambling Regulations 2001;
- The Federal Government's Trade Practices Act 1974;
- The Federal Government's SPAM Act 2003;

- The Federal Government's Privacy Act 1988;
- Multi-jurisdictional Responsible Play Guidelines;
- The Fundraising Institute of Australia's "Standard of Electronic Practice" 2008;
- The Australian Direct Marketing Association's "Code of Practice" in particular its Ecommerce Standards;
- The Australian Association of National Advertising "Code of Ethics"

The administrative costs and activities required to manage this inconsistent and duplicative regulatory framework reduces the level of funds for services and decreases organisational efficiency.

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.

BoysTown is a major operator of National Charitable Art Unions. All funds are used to support our service delivery. Currently two-thirds of our operating costs for Kids Helpline, Refuges and Employment programs are sourced from income generated by the Charitable Art Union. We estimate that at least \$174,000 is expended each year in managing the separate approval and reporting processes across States and the ACT as well as separate State requirements concerning the various Collections Acts. Most of these costs are incurred in administrative staff time. A breakdown of these costs is outlined in Appendix 1.

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?

It is our belief that existing fundraising regulation is not an issue that impacts on the public confidence and levels of participation by the community in fundraising events. The Giving Australia Report quoted in the Discussion Paper noted that giving behaviour by Australians has consistently increased. This giving behaviour increase is reflected in BoysTown, with increased public support evident over the past 50 years of operation. Charitable organisations in Australia have substantive histories of operations including BoysTown which celebrated its 50 years of service in 2011. The real impact of current duplicative State legislation and regulation is in relation to the increase costs of administrating fundraising as outlined in the response to the previous question.

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

The named activities in section 18 should be exempt from regulation.

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

It is our view that any fundraising activity of up to \$10,000 should comply with national standards. Inappropriately managed fundraising events even at the local level have the potential to harm the repute of all fundraising activities managed by charities.

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?

As previously stated the need for nationally consistent fundraising legislation is critical. Consequently any transition period needs to be minimal.

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

The approach outlined in section 28 as to the ACNC's role is supported. The ACNC should also be responsible for the administration of a 'financial health' assessment on charities engaged in fundraising – refer to question 2.12.

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

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?

Charities that engage in fundraising need to be financially sustainable with a strong existing balance sheet. Fundraising is costly and financial returns are not guaranteed. Consequently if the fundraising organisation is not financially secure there is a danger that any funds generated will be used to offset business costs rather than be committed to service delivery linked to the primary purpose.

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

Systemic failure by the organisation to abide by contemporary corporate governance processes that may lead to misappropriation of funds and poor recording and reporting practices should lead to fundraising bans.

The length of ban applied should be reflective of the size of the organisation and the value of the funds raised or not. Changes in management and governance should be considerations in lifting bans rather than be time based.

Chapter 3 – Regulating the conduct of fundraising

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

Yes

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

We believe that calling hours should be regulated. BoysTown abides by both the Funding Institute of Australia (FIA) and the Australian Direct Marketing Association (ADMA) standards that allows for calling hours to be from 9am to 8pm. It is our view that these standards should be followed in the development of any national regulation on this issue.

Furthermore we believe that practices around fundraisers calling hours should be strengthened by:

- Increasing levels of community awareness concerning the Call Back Register. Generally we believe that people are not aware about their rights in respect to this protection, hence allowing organisations to undertake outbound telemarketing outside of best practice.
- Improved reporting standards against current industry guidelines issued by FIA and ADMA

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?

All charities should be compliant with ACL standards.

Chapter 4 – 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?

Yes. It is our understanding that this is currently required with respect to taxation legislation. There should be no exceptions. Charities with DGR or PBI status should also include these details on documents.

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?

Yes

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

Yes, charities need to be transparent on these matters.

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

We see no need for this requirement. We believe that this would best be managed by the ACNC instituting their own public awareness campaign.

Chapter 5 – 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?

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?

BoysTown supports the need for transparent reporting on the use of income derived from fundraising. The issue however is the determination as to what is the most accurate process for disclosure after giving.

We believe that reporting on specific fundraising campaigns would lead to misleading analysis as to the social value created. NFPs delivering services to marginalised people are dealing with complex and linked problems that require interventions over long periods of time to overcome their disadvantage. Specific fundraising campaigns may also have longer term impacts. For example, a campaign may engage new long term donors to the charity which enhances future income. Specific campaigns may also over time increase awareness about the charities brand enabling the organisation to achieve more funds with less cost in the future. Consequently the most accurate assessment of a campaign is its life time value for the organisation and its beneficiaries rather than any assessment of its individual return.

A possible solution to this issue is the about to be commenced reporting by registered national charities with the ACNC. The proposed annual reports which will be publicly available on the ACNC website will provide sufficient information on an annual basis to inform the public concerning their decision about which charity to support.

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

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

In view of our response to questions 5.1 and 5.2 we do not believe that any additional reporting over and above current statutory requirements such as the provision of annual financial returns to ASIC and the soon to be implemented reporting to the ACNC are required.

Chapter 6 – Internet and electronic fundraising

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

For the reasons stated in the Discussion Paper concerning the high risk of large scale scams involved with internet and electronic fundraising and also the fact that any internet fundraising is by its very nature national and indeed international in scope, we strongly support the view that this activity be prohibited unless undertaken by charities registered with the ACNC.

However we question whether the ACNC could enforce this restriction given the limitations in the enforcement of national legislation on internet activities.

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?

Charities engaged in this form of fundraising should disclose their ABN on all communications.

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

Standards governing internet and electronic fundraising need to incorporate the current Credit Card Vendor standards and Anti-fraud provisions.

Chapter 7 – Fundraising by third parties on behalf of charities

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

Third party fundraising practices can have a deleterious impact on the reputé of the charitable sector. Consequently to promote public trust and confidence in the sector we believe strongly that this activity should be regulated. The focus of regulation could be similar to that of the financial advisory services sector and include disclosure of commissions. Furthermore regulation should place emphasis on the sponsoring charity to take primary responsibility for the conduct of third party fundraisers.

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

Yes, volunteers are the legal responsibility of sponsoring organisations and subsequently do not require regulation.

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?

Yes. This would also assist charities in their selection of third party fundraisers and assist the establishment of national standards for this activity.

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

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

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

Consistent with the principle of public transparency these disclosures should be a requirement of regulation.

Conclusion

The reform of fundraising legislation and regulation is imperative. The current inconsistent State and Territory legislation substantially increases the costs of fundraising and is a barrier to the efficient operations of NFPs. The only solution is the repeal of all existing State and Territory legislation and the introduction of national legislation. This would be best achieved by the transfer of current State and Territory power to the Commonwealth. This industry reform needs to be implemented immediately with a minimal transition period.

Appendix 1:

Lottery – Annual Permit Cost Estimates				
	Application Cost	Luxury House x 10	Prestige Car x 5	Total
SA	\$7.10	\$71.00	\$35.50	\$106.50
NSW	\$0.00	\$0.00	\$0.00	\$0.00
VIC	\$42.80	\$428.00	\$214.00	\$642.00
ACT	\$687.00	\$6,870.00	\$3,435.00	\$10,305.00
QLD	\$2,784.85			\$2,784.85

Collections Licence Cost estimates		
	Application Cost	
WA	\$0.00	
VIC	\$0.00	
SA	\$0.00	

+ Collections Licences incur additional costs as follows:

WA Police Certificates @ \$44.65 ea x 3 = \$133.95 (licence runs over 3 years = \$44.64 per annum)

VIC National Police Certificate @ \$33.00 (licence runs over 1 year = \$33 per annum)

Total Per Annum Permit & Licence Costs:			
	Lottery Permits	Collections Licences plus associated costs	Total
SA	\$106.50		\$106.50
NSW	\$0.00		\$0.00
VIC	\$642.00	\$33.00	\$675.00
ACT	\$10,305.00		\$10,305.00
QLD	\$2,784.85		\$2,784.85
WA	\$0.00	\$44.64	\$44.64

Total Per Annum Lottery Permit & Collections Licence Costs \$13,915.99

Estimated Compliance Costs across the Six Jurisdictions

Draw Costs – 15 draws at \$500	\$7,500
Some jurisdictions require an independent witness to be present at the draw.	
Lottery Audit Costs – for 2 Jurisdictions	\$9,000
Variations between jurisdictions some require Financial Audits after each lottery while others require annual Audited returns.	
Admin Costs for Application and Acquittal of Permits	\$25,000
SA, NSW, VIC and ACT all require individual lottery permit applications while Qld requires an Annual application. All applications require different content.	
Collection Acts financial returns	\$ 7,500
Some jurisdictions require Annual Fundraising Returns excluding the Art Union Fundraising and in some cases they are required to be reviewed by an Independent Financial Auditor.	
NSW Acquittal Return	\$ 6,000
NSW acquittals require the return to be separated into NSW and National fundraising.	
Legislative Requirements – Prizes	\$21,000
States have varying requirements regarding Engineer Reports and independent prize valuations.	
Legislative Requirements – Advertising	\$20,000
Multiple versions of Press/Radio/TV advertising to meet terms and conditions requirements of each state jurisdiction.	
Collateral Legislative Administration	\$20,000
Ensuring printed material meets all of the various state based requirements – includes cost of proofing and regular researching of changes to these requirements	
Banking – Separate Victorian Bank account	\$ 5,000
Administrative Cost of Maintaining a Victorian Bank account for Victorian fundraising.	
Management Cost	\$40,000
Maintaining currency with all of the various jurisdictions	
Permit and Collections Costs (as above)	\$13,915
TOTAL	\$174,915 per annum