

# Charitable fundraising regulation reform, submission.

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## Kids with Cancer Foundation (Australia) Limited

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*As I'm unsure whether charitable gaming through lotteries, art unions & raffles will come under the fundraising regulation reform I will answer the questions as though it might*

### **Consultation question:**

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

In my opinion charitable fundraising requires its own specific regulation as the funds collected are public funds and really only kept in trust by charities and to be used for the specific purpose for which they were raised. I think that it is important for the general public when they support a charity to know that there are specific regulations that charities must abide by in order to remain transparent and trustworthy.

Whether the regulation should be taken away from the States is another question. We run our lotteries in NSW, Vic & ACT and we have a Sanction in Qld for fundraising. We are able to comply with all the different regulations and I would hate to see it made easier for fly-by-nighters & shonks to operate without proper transparency. I would recommend that charitable fundraising regulation remains as is for lotteries and raffles and left for the individual States & Territories.

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.

We operate continuous art unions/raffles/lotteries in NSW, Vic & The ACT valued at less than \$100,000 in prizes. We are therefore required to hold a fundraising licence in each precinct. We are also sanctioned for fundraising in Queensland. There is a cost to apply for raffle permits in Vic & ACT but these are really minor. The actual fundraising licence in each State has no charge.

We are impacted by the requirement to conduct an audit on each of our NSW raffles. As we are a PBI Limited by Guarantee we are required to use an independent registered company auditor, and to a children's charity that additional cost is a burden that is not required by fundraisers in other States, so there is no level playing field for fundraisers across borders. The additional cost burden (because we operate in NSW) reflects on our profit & loss (cost of fundraising) outcomes that fundraisers in other States don't have and this once again shows the lack of a level playing field for all.

I am not suggesting that audits should not happen, as these audits should keep everyone honest. My suggestion is that all lotteries over \$5,000 should be audited by independent auditors and not employees of the fundraisers.

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 fund raising activities?

In recent times there have been newspaper articles exposing fraudulent office bearers of some charities. In South Australia there was a director of three separate entities, charities, who is no longer allowed to be a director or in any way involved in his three charities, yet those same three charities are allowed to fundraise in NSW. In some ways NSW Regs are tough, but not always.

I feel there is an impact on public confidence if an Office Bearer is banned in one precinct yet allowed to control the same organisations in another.

It should be the same for all precincts & that is what having one body (ACNC) will bring about and therefore instil public confidence.

If the public of NSW knew the director of three charities was banned in his home State yet allowed to fundraise in NSW they would of course lose confidence in the existing NSW fundraising legislation.

### Activities that may be exempt from fundraising regulation

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

I would feel happy for some items listed to be exempt from fundraising regulation. However religious organisations should not be exempt just because they are religious by nature. The proliferation of new religions over recent years casts some doubts on their credentials and I don't accept that just because your organisation is religious that your organisation deserves special treatment over & above what other groups of like minded people in our community receive. Should an organised group of atheists also be exempt?

Voodoo is a religion in some countries Wikipedia explains: *Haitian Voodoo is a syncretic religion that originates in the Caribbean country of Haiti. It is based upon a merging of the beliefs and practices of West African peoples, with Arawakian religious beliefs, and Roman Catholic Christianity. Voodoo was created by African slaves who were brought to Haiti in the 16th century and still followed their traditional African beliefs, but were forced to convert to the religion of their slavers Practitioners are commonly described as Vodouisants*

My point may be seen as over the top but a religion is a religion, isn't it? Why not in Australia? We are no longer just a Christian country. Should the Voodoo religion also be on the list of exempt religious bodies and therefore exempt from fundraising regs?

At the moment one of the biggest charitable lottery activities is undertaken by BoysTown as part of the Catholic Church. They are in a competitive market and promote their product (probably Australia's largest art union) Australia wide, sometimes breaking NSW State laws dealing with foreign lotteries (lotteries advertised in NSW without a licence). Being a religion they are not required to obtain fundraising licences & are therefore exempt from the fundraising Acts & Regs that all other charitable organisations are forced to abide by.

Years ago it was revealed in Brisbane's 'Courier Mail' newspaper in 2002 "Brothers Holiday in Prize" that the De La Salle Brothers and others were holidaying in a Gold Coast high rise apartment for two years, purchased as a possible Boys Town art union prize, but never used for the purpose intended. They ceased the holidays and sold the apartment. Also revealed in the 'Courier Mail' in 2002 the former lay CEO of Boys Town was living in an \$840,000 home bought for him to live in as part of his \$250,000 a year package.

My point being just because a religious group runs a lottery or holds public funds it doesn't mean they will always do the correct thing with that money.

Religious organisations should be allowed to fundraise for donations but should be banned from charitable gaming (over \$25,000 prize limit) if they want to continue to be exempted from fundraising regulations.

If existing State charitable gaming regs. remain, I would not agree that raffles & lotteries should be regulated by new fundraising regs.

2.5 Are there additional fundraising activities that should be exempt from fund raising regulation?

None that come to mind at the moment.

### **Implementing a national approach to fundraising regulation**

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.

I have no evidence to show that it is so.

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

The proposal for a \$50,000 threshold I think is fair for the smaller charities, not for profits & volunteer groups. This threshold would relieve small groups from the compliance burden and most have Articles of Association & non profit guidelines that they adhere to.

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, in my opinion if the smaller entities are exempt from ACNC legislation it should be the same Australia wide.

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 a fundraising activity can be newly commenced, or planned, or for a set time period time will need to be given to transform to new legislation.

To develop national fundraising regulations taking into account existing State & Territory fundraising regulations and reduce them to one national set of regulations. The ACNC must look closely at all existing regs and consult with the various State & Territory regulators and of course allow all the organisations that wish to be registered with the ACNC to join in discussions dealing with what existing regs need to be kept & what new regs should be added. Charitable gaming, lotteries, art unions & raffles are a mine field of additional regs on top of fundraising regs that will need to be closely looked at. The last thing that Australia needs is charitable gaming that does not protect the public from unscrupulous organisers or commercial traders conducting lotteries on behalf of charities. There has been lots of recent press concerning such bad practices and that is a shame for all charities that bother to abide by existing regs.

We gain raffle permits in 3 States and have done since 1999 and I'm aware of the many differences in current gaming regs as we have a need to comply with them all. Our art union has a maximum prize of \$99,000 and in this sector NSW is by far the toughest regulator

To my knowledge NSW is the only one that has a minimum profit required to gain further permits, 30% or 40% if it's a raffle with a prize less than \$25,000. For donation drives the profitability must be 60% other States don't care.

Our art unions are audited for NSW but not for Vic or ACT. Victoria doesn't know who our past 46 winners are, Vic doesn't know if our prizes were actually awarded, they have no idea how many tickets we sell, or how we use the money raised. In Vic there is no need for the draw to be conducted in a public place, so the public can be locked out of the draw procedure and the promoter can win them all by pulling his ticket from the top of the barrel.

In NSW sold lottery tickets must be kept for 3 months & unsold 2 years, in this way NSW gaming regulators can conduct their own audit if needed. In Vic tickets are shredded after the draw & nobody knows whose tickets were included in the draw, barrels are easy to rort and shouldn't be allowed. We have commissioned sellers selling our tickets in Vic shopping centres. Each seller has an encoded deposit book to deposit gross sales into our raffle account. I could easily give one seller a deposit book into my account and declare those seller's tickets unsold, and pocket \$50,000. Vic regulators wouldn't know.

New regulations for charitable gaming must take into account that transparency of funds raised should be paramount, so I ask that the ACNC not follow the Vic Regs, as a much closer scrutiny of the outcome of raffles is required.

Queensland charities that conduct art unions (some well above \$1million) are not required to make any profit, fair & reasonable is good enough for them & it can be as low as 2%. One year The Mater Foundation raised \$8million from its car raffles yet was only \$600,000 in profit but that was fair & reasonable during hard times. This return if widely known would affect the public's confidence in all charitable gaming and such a low return should never be allowed when public funds are involved, there is an expectation that money paid to a charity will in some way do some good.

There must be a minimum requirement for fundraising outcomes and as tough as they are I would recommend the NSW regs for outcomes as that minimum requirement. We have conducted continual art unions in NSW since 1998. The NSW regs mean that a fundraiser must do their best at all times to reduce overheads & this may mean that some not for profits will not be able to use the services of for profit entities. The charities may need to conduct their own fundraising and not accept a paltry amount handed over by the commercial fundraiser & think that "something's better than nothing".

A well known & successful charity in Sydney raised \$8.5million from raffle ticket sales in 2010/11 but it cost \$6.3million to raise it so the charity achieved just 26% or 26c in every dollar raised. Their raffle has a prize less than \$25,000 so they need to achieve a minimum 40% to comply with NSW regs, yet they are still allowed to continue.

Currently our art unions/raffles are for a 4 month period, but are planned and permits applied for a month prior to commencement. We need to allow time for advertising & tickets to be printed once permits are received and this is prior to the start of the 4 month campaign. It's possible that we may require 5 – 6 months to transition to any new regs.

## Registering for fundraising activities

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

To develop national fundraising regulations taking into account existing State & Territory fundraising regulations and reduce them to one national set of regulations. The ACNC must look closely at all existing regs and consult with the various State & Territory regulators and of course allow all the organisations that wish to be registered with the ACNC to join in discussions dealing with what existing regs need to be kept & what new regs should be added. Charitable gaming, lotteries, art unions & raffles are a mine field of additional regs on top of fundraising regs that will need to be closely looked at.

The last thing that Australia needs is charitable gaming that does not protect the public from unscrupulous organisers or commercial traders conducting lotteries on behalf of charities. There has been recent press concerning such bad practices and that is a shame for all charities that bother to abide by existing regs.

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

If an organisation is registered with ACNC it should be automatically allowed to fundraise in any State or Territory.

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

It should be automatic, but I think proper consultation with the States should be undertaken in case something is missed as they are the experts.

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

Fraud etc should be a lifetime ban and the failure to follow fundraising regs (non compliance) after proper notification by the regulator should have a ban of at least 12 months.

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## Application of consumer protection laws to charitable 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?

Telesales should be restricted between 9am and 5pm Monday to Friday, 9am to 12midday Saturday & not on Sunday. Walking up to people on the street soliciting face to face should have similar hours.

Most telesales for charities are run by profit making commercial call centres and these for profit companies take the majority of the sale for themselves and pass on a lesser amount to the charities. These telesales if run by a profit making company should not be exempt from the 'Do Not Call Register'.

Charities who take out casual leasing sites in shopping centres (as we do) must conform to the Centres core hours and the sites must be manned at all times, Sundays & late trading night trading included. We are not walking up to people in a public place, door knocking at their home or calling them on the phone at night.

We pay rent to shopping centre Managers and it's for a seven day period and in order for us to make a profit over our costs we need to be at our sites seven days a week during those core hours.

## **Charitable fundraising and unsolicited selling provisions of the ACL**

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?

Unsolicited selling provisions of the ACL should be explicitly applied to charitable entities.

## **Information disclosure at 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, no exceptions**

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**

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

**Yes**

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

**Yes, unattended collection points should advertise if a commercial trader is involved in the undertaking of the activity.**

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**

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

Full disclosure if a commercial, for profit trader is involved with the solicitation, showing the amount that the trader is to receive initially and as an on-going commission. The disclosure should be kept simple & to the point without hiding the truth from the potential donor. The NSW rules for Trader advertising should be maintained: if the charities name/logo is shown the trader's name/logo should be shown in the same size and not hidden from view. The fact that the donor's information is being given to a commercial trader should be explained & not hidden in the fine print so that they are aware who may have their credit card details. The fact that the trader will give the donors info to other similar charities should be clear & also not hidden in the fine print. The donor should be allowed to opt in to such info sharing rather than making a phone call in order to opt out.

The Children's Cancer Institute Australia uses a trader to collect donations and information and the trader works for many charities and is allowed to pass donors info to other employees in its group to harass donors of a second, third or fourth charity and it's hidden in the fine print, copied below. It even states if you don't give all your info you may not receive a proper receipt. This should be opt in and not require a tick in a box or a phone call to prevent it.

*We collect personal information from you in order to assist CCIA in growing support for CCIA's research and, if you make a donation, to facilitate that donation. In order to do this, we may disclose your information to our contractors and services providers, such as mailing houses, data management providers and our banks. If you make a donation, but do not provide some or all of the information requested, we may not be able to issue you with an appropriate receipt for your donation We may also use or disclose your personal information from time to time in order to provide you with further information on our activities or opportunities to support CCIA **If you do not wish to receive this information from CCIA please tick this box**  or contact us on 1800 685 686.*

*Occasionally CCIA may disclose your contact details to other like-minded charities to provide information about their activities or services that may be of interest to you. In return they allow us to do the same and this way we can reach more people with vital information. **If you do not wish to receive communications from like-minded charities please tick this box**  or contact us on 1800 685 686. In most cases, you can gain access to your personal information that we hold, by contacting us on 1800 685 686 or any of the other contact details identified above.*

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

No

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

If the beneficiary is the charity itself no description is necessary. If Kids with Cancer Foundation raises funds for itself it is the beneficiary. If the fundraising is conducted on behalf of a beneficiary by a commercial fundraiser a description and outcome should be included.

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?

As we raise the majority of our funds in NSW I would recommend the NSW Fundraising Act & its Regs as a minimum requirement as other States & Territories don't appear to have such minimum requirements.

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

Fundraising specific requirement for charitable gaming, lotteries etc should also follow the NSW guidelines & Act. In NSW we need to keep unsold art union tickets for 2 years to prove we didn't sell them, in Victoria organisations dump all their tickets after the draw and that leaves it open to fraud where an organiser can pocket funds by saying that the equivalent number of tickets were not sold and leave those tickets out of the draw: see "Kids at Sea Program" and others in Vic.

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

I think if an audit is required by larger entities it should be the same for all entities. Smaller entities may chose to remain a State Incorporated entity in order to avoid audits by an independent body. Having an organisation's employee conduct an audit on its own fundraising outcomes does not have the same transparency as an independent external audit and all charities that wish to partake in fundraising should be on a level playing field. Each of our art unions is audited (being a NSW requirement) by a registered company auditor.

We raised \$4.6million in ticket sales for the 2011 year and we made well over the 30% profitability requirement for NSW. A similar organisation using a commercial trader with raffle sales of \$8.5million for the same period did not require each raffle to be audited (as we did) because their prize value was less than \$25,000, they failed to make the 40% requirement for smaller raffles & only achieved 26% but this only showed in their annual audited accounts, so Gaming & Racing NSW was unaware of their poor performance and they continue.

## **Internet & electronic fundraising**

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

Yes

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, I cannot see why it would be impractical.

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

None that come to mind.

## **Fundraising by third parties on behalf of charities**

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

As is currently the case in NSW there should be a written contract between charities & entities that are paid for their services. The minimum requirement that the charity has agreed on to receive should form part of the contract. The charity should receive its portion as agreed before the commercial fundraiser receives its percentage. The contract should stipulate any new requirements that will come into force under these current proposed changes in this Draft.

Regulation dealing with advertising and disclosure of the benefit to the third party fundraiser should be enforced using the NSW regs as a guideline minimum. Commercial traders hide their interest in fine print that is only sometimes seen after the donation or purchase has been made. Often backpackers working for traders will wear T shirts bearing the name of the charity in large letters or the charities logo, and the trader's info will be hidden in fine print somewhere on the back of a sheet of paper. This is not proper disclosure or transparency and is not properly policed even in NSW where it isn't allowed.

If a charities name or logo is displayed by a trader that trader's details must be displayed accordingly in the same size and in a similar position so that the public is fully aware prior to making the donation or purchase.

There is absolutely no proper disclosure or transparency of third party fundraising at the time of collection being face-to-face or in telesales at the moment. When has a telemarketer ever disclosed who the trader is when they call? They only ever mention the charity.

When have you ever been able to walk up to a face-to-face fundraiser and find easily that the collector works for a trader?

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

Yes, as mentioned before (above) the commercial fundraiser took \$8.5million as public funds yet the charity only ended up 26% in profit. No doubt the fundraiser made millions in the year from that charity and probably worked for other charities (as they do) so there is an industry set up taking public money and declaring it only in the very fine print and using confusing words so that in the end nobody understands:

*Call Centre services provided by Contact Centres Australia Pty Ltd ABN 65100 107471, Lvl5, 241 Commonwealth Street Surry Hills NSW 2010 Ph: 02 92884600 Fax: 02 92800073. 5% of gross proceeds, call charges \$0.90 per connect, and database management fee of \$24,000 Paid to Contact Centres Australia. All other monies raised are paid to the CHARITY for the purposes set out, with exception of postal, printing and cost of prizes not exceeding a total of 15% of the gross proceeds of the raffle.*

At the end of the year the actual cost was \$6.3million to bring in \$8.5million, 74%. For proper transparency the disclosure should've stated that the trader receives over \$6million to run the year's raffles on behalf of the charity, and the public could've made up there mind to support the raffles with a better understanding of the payments received by the trader, without the confusing fine print above that gives no actual true indication.

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?

Third party fundraisers that are paid for their services should be required to register with the ACNC.

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

Yes

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?

Yes

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

Yes

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

No, if an individual decides to shave his head in the local pub and send money to a charity, it really doesn't require regulation and even so the money is often received after the event without any prior knowledge.

Peter Bodman

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Kids with Cancer Foundation Australia