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SUBMISSION ON Charitable Fundraising Regulation Reform Discussion Paper

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

Response:

The need for regulation will involve the consideration of two issues:

- The definition of charitable fundraising
- Other regulations already applicable

*The definition of charitable fundraising*

The definition of charitable fundraising that is included in the discussion paper is all encompassing and it appears intended to include every amount received by a charity with specific exclusions in limited circumstances (four exceptions are suggested in the paper)

Charities (and other not for profits) are reliant upon “fundraising” in order to generate their income so that they may undertake the activities within their objects / purpose.

Some NFP’s are able to source or apply for government grants for the provision of services or to establish new or upgraded facilities.

NFP’s under the Corporations Law are companies limited by guarantee – that is in the event that the company (NFP) were to go into liquidation, its members would be required to contribute to any shortfall up to the limit of the guarantee as specified in the NFP’s constituent document. NFP’s established under state based legislation operate under a similar limited guarantee arrangement. The guarantee amount is traditionally two dollars.

NFP’s by definition cannot distribute to their members and do not have share capital. Consequently if a NFP needs capital to acquire assets or undertake projects it can only do so through

- Specific donations to assist with the asset acquisition or project
- Accumulated funds
- Funds borrowed from financial institutions

Most charities and NFP's generate their income from activities that will fall within the contemplated definition of charitable fundraising.

Within charities across Australia these activities may include:

- Direct requests to individuals and corporate to provide a gift deductible donation;
- Large scale functions providing entertainment and similar activities where those attending do so in the knowledge that the net proceeds will benefit a charity;
- Smaller scale functions in local communities;
- Race days, golf days etc
- Auction of donated items at functions and events
- Minor art unions and raffles
- Sausage sizzles, lamington drives by groups of persons including volunteers with proceeds to the charity
- Sponsorship by a business where there is an exchange of services – the charity provides advertising for the business that pays the sponsorship amount to the charity.

From time to time many charities also benefit from bequests. The decision by the individual whose estate provides the bequest will often have made that decision as regards beneficiary well in advance, perhaps years in advance

Under present legislation, not for profit education providers (such as kindergartens, schools, colleges and universities) qualify as charities. Whether the proposed statutory definition of charity removes them as charities, they will remain as not for profits.

The proposed definition in this discussion paper would include within charitable fundraising school fees, kindergarten fees, booking fees, course fees.

If regulations are to apply to charitable fundraising it would arguably be essential that they apply in a universal manner. These regulations would need to be able to cope with spontaneous fundraising activities such as those that were undertaken following the Victorian Bushfires

They would also need to apply to the 2011 Flood Relief Appeal initiated and controlled by the Queensland Government. The public were encouraged to donate to the Relief Appeal but the terms upon which the funds were to be allocated were announced weeks later and these terms introduced a means test that was inconsistent with the message at the time of the donations being (this message being that the Relief Appeal was to assist all Queenslanders).

#### *Other regulations already applicable*

Within the Australian system there already exist a number of significant legislative requirements and regulations under which charities must comply.

These include:

- Income tax

The term donation (gift) is a term that is defined in the income tax legislation and extensive case law. The law requires that the amount paid is a gift without the donor receiving anything in return other than a receipt / evidence of the donation.

- Goods and Services tax

As a generalisation, charities will be registered for GST. Therefore supplies that they make will be taxable supplies for GST purposes and one eleventh will be GST. An unconditional donation (gift) falls outside the definition of a taxable supply.

However a tied donation is treated as a taxable supply and one eleventh of the donation must be remitted as GST. A tied donation arises when there are conditions attached to the donation such as the donation must be applied to the purchase of an aircraft as a condition of it being made.

The ABN must be disclosed on a qualifying tax invoice issued by the charity.

- Corporations Law

All entities controlled by the Corporations Law are required to disclose their Australian Company Number (“ACN”) on all business documents. Where the last six digits of an ABN correspond with the ACN it is only necessary to disclose the ABN.

This requirement to disclose includes all correspondence (paper and electronic), receipts, proposals, websites and financial statements. Most organisations include their ABN on all printed materials and all electronic media to ensure this requirement is met.

- Trade Practices

The Trade Practices Act imposes a responsibility on all organisations that their documentation / advertising etc must not be false or misleading. Goods supplied must be fit for the purpose.

- Telecommunications legislation

The telecommunications legislation includes controls around the use of telephones, emails and texts on those organisations operating in Australia. This legislation establishes controls on telemarketing and restrictions on the issue of high volume emails that are better described as spam. The telemarketing rules establish registers for Do Not Call that all telemarketers are required to abide by.

- Privacy legislation

Federal privacy laws restrict an organisation in its use of personal data collected by its customers or donors.

- Door to door sales legislation

This legislation places a number of restrictions on persons who are selling a product or service that involves longer commitment. Current examples are those persons who seek out members of the public on the street

In addition the auditors of a charity / NFP will consider the internal controls and procedures as part of the regular audit process. The auditor’s review will provide independent analysis of the controls that the charity / NFP have in place or need to add to ensure the integrity of the accounting system and controls over the funds raised

*Comparability of charitable fundraising*

Periodically there is discussion in the media regarding comparisons of NFP's fundraising and costs to generate that fundraising. The greatest focus of the media discussion is on the costs as a percentage of fundraising.

The numbers and percentages that are quoted appear to have had little or no analysis to consider whether the numbers and resulting percentages are in any way comparable.

### General comments on fundraising

There is a very broad statement in paragraph 50 that we respectfully submit is without substance and is very misleading, namely

*Given that fundraising activities can lead to the accumulation of substantial funds...*

Whilst it might be that at the outset of any fundraising activity those undertaking that activity would wish that it will generate a good financial outcome there is no basis upon which such a sweeping statement can be justified. Some fundraising activities are not successful and produce minimal funds or consume existing funds.

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.

Current fundraising regulation includes major art unions and minor art unions. Under Queensland legislation as an example, there is no formal reporting on minor art unions. There is regulation to test whether the minor art union activities have transitioned into the major category. Annual reports including audited financial statements are required for most NFP's that operate minor art unions.

For major art unions the reporting is specific to that art union with a focus on delivery of prizes as promised.

Consequently the current reporting imposes limited burdens. Most NFP's are required to supply their audited financial statements to the reviewing government department.

This paper hints at a substantive increase in the reporting regime

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

If the term fundraising regulation is used in a very generic manner, and one of the overall objectives of the national regulation is to assist with the maintenance of the integrity of the NFP fundraising sector there would appear to be some logic associated with the expectation that the level of reporting for large scale fundraising activities may include more details or have a shorter reporting deadline.

Establishing a single monetary threshold as the sole measure is a fraught with difficulty.

One monetary threshold of a lottery can be relatively easily established in advance by the number of tickets that are intended to be available for sale.

For other fundraising the quantum can only be known as an historical number. The question arises whether the rules seek to apply to the gross income of the fundraising activity or the net amount generated.

### 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?

To retain a separate regime of rules at a State level maintains the existing inconsistencies that exist now between the state systems and introduces a new layer of complexity that does not currently exist.

This may have less impact on those charities / NFP's that remain under only one jurisdiction.

However for any charities / NFP's which grow (or contract) and must transition from one regulatory system to the other, this suggestion introduces a new level of complexity of changing systems, and no doubt for a period of time reporting under two regimes.

For any charities / NFP's whose size or activities hover around the threshold test, they could be subjected to the challenge of fluctuation between the two regimes. For many charities / NFP's their size will fluctuate as they secure new sources of funds or the cause that they are promoting gains stronger need for action or public support.

### 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?

The transition time needed will depend on the degree of change.

Many fundraising activities require extensive planning and preparation with a long lead time and the changes can cause delays or cancellation of those plans.

In addition the changes will introduce new rules and require changes to how charities / NFP's conduct their activities. With the reliance on volunteers in most activities the time lag to introduce change is longer.

The changes may take several years to fully implement.

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

Charities particularly as they grow in size, need to adopt business principles if they are to survive and grow.

As a general rule charities should as a matter of good governance apply the same ethical rules as a business with recognition that charities and NFP's do not have the same controls over their volunteers that a business will have over its employees and contractors.

There should also be recognition that a charity may have limited control over third party individuals and organisations that may be undertaking an activity with the intent of benefiting the charity.

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

This comes back to the definition of fundraising activities. The proposed definition for this regulation includes sale of goods and services, dinners, fetes, race days, art unions, doorknock appeals, donation requests and a multitude of other activities.

Presumably calling hours will also relate to activities such as telemarketing and doorknock appeals.

The telemarketing for sale of art union tickets, requests for donations are already regulated through the telecommunications legislation.

Doorknocks are also already controlled through the ACL and State regulations with an exemption available for charities to visit homes on Sundays whilst there would be a restriction on sales calls by door to door salespersons / dealers.

Further restrictions in this regard would restrict the ability of a number of charities to undertake their doorknocks and fundraising.

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

When the ABN system was introduced in 1999 it was promoted as the key number for entities to use in the public domain. Current laws require charities incorporated under the Corporations Law to disclose their ABN on all business documents. This includes orders / contracts and receipts .

The Australian Business Register ([www.abr.gov.au](http://www.abr.gov.au)) currently provides a resource where people can undertake an online search to confirm key details including:

- Correct entity name
- Entity type such as "Other incorporated entity"
- Whether the entity is registered for GST
- Whether the entity is endorsed as a charity
- Whether the entity enjoys certain taxation concessions

**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?**

We submits that the question of whether a person engaged in the charitable fundraising is being paid or not is of limited interest to the person being approached / served.

There is also serious question of the practicality of how such information would be conveyed and how the test of whether a person is paid is able to be determined.

Conclusion – such a requirement will introduce a new layer of regulation requiring interpretation to be able to determine whether a person qualifies as being paid during particular activities

4.3 Should persons engaged in charitable fundraising activities be required to wear name badges and provide contact details for the relevant charity?
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The following comments are directed at circumstances where persons are seeking donations or are selling minor items such as pens, calendars etc with the charity log displayed.

Persons who volunteer to assist in charitable fundraising can be of a wide range of ages. This will include those under 18.

Charities such as the Salvation Army Red Shield Appeal do doorknocks, and that school children (predominantly secondary school children) will be part of the manpower required. Adults supervise the children.

This participation is beneficial to society in general as it introduces those children to the concept of helping others.

I submit that persons under 18 should not be required to wear name tags.

The fact that a person is wearing a name tag does not of itself provide any significant protection to the public or charity. The regular volunteer is going to act honestly and diligently and whether that person has a name tag or not will not diminish their integrity.

If a person set out to fraudulently represent themselves as a collector for a particular charity in order to secure personal gain, if they need a name tag to appear genuine they will put on a name tag. It probably will not have their real name shown.

I submit that a name tag will not of itself add any substantial protection. Many persons will choose to wear a name tag as a means of breaking down the barrier between themselves and the persons from whom they are seeking some form of financial support.

The situation would differ totally if the charity was selling a significantly complex product or service that required access to the personal details of that member of the public. If this was the case it would be appropriate that there be clear identification.

These more significant sales approaches would be more closely aligned to the door to door sales restrictions.

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

The requirements should include consideration of the physical attributes and the maintenance of records of location and frequency of collection. The charity / NFP should maintain this as good governance to achieve integrity in the donation process and not because some regulation so requires

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 charity or fund that is granted Deductible Gift Recipient status will regularly disclose this on letterheads and information kits. Receipts include the statement required under the income tax legislation that “Donations of \$2 and over are tax deductible”.

A charity or fund will actively promote this as a means to encourage.

If a charity / NFP were to use the term “Donations of \$2 and over are tax deductible” when this is not correct, this will be a breach of the income tax legislation now, and also be misleading under the Trade Practices legislation.

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

I submit that the response to requests for giving will reflect the degree to which the cause in one of significance to the public at large or the sector being targeted, and the “brand” of the charity / NFP.

One of the best examples of the cause is the Victorian Bushfires Appeal.

From a brand perspective, a charity / NFP must earn the respect of the public through a multitude of methods that may include the type of services delivered, financial integrity, good governance and community need.

A good test of the brand is the doorknock. Organisations such as the Salvation Army Red Shield Appeal enjoy good brand recognition and a high positive response to a request for a donation. Lesser known charities or those more specifically targeted at a cause may not have the same high level of response

The information needs to be available on the website and from the organisation itself. It is not appropriate to burden a volunteer collector with the full argument of the merits of a particular organisation.

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

The significant details of an organisation are captured on the Australian Business Register (“ABR”).



It would be appropriate to provide the electronic link from the individual charity / NFP listing on the ABR to the ACNC site in the same manner as there is a link now from the ABR to the ASIC website.

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

Charitable fundraising is not limited to particular events or major art unions,

This is a continuous process of generating funds that are then applied to the objects.

It is not practical or appropriate to apply qualitative elements to specific fundraising activities of a charity.

The assessment of the application of funds towards the furtherance of a charity's objects is a whole of organisation assessment.

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?

Currently there is a requirement to provide a report in respect of major art unions - this is focused on the number of tickets sold, the proceeds and related information to evidence the integrity of the major art union process.

The reporting should be retained in respect of major art unions to manage the integrity of the art union system.

If the art union is conducted by a person other than the intended charity / benefactor, it is appropriate to also require reporting on the payment / transfer of the proceeds to the other charity / benefactor within a reasonable timeframe.

However if the art union is conducted by the charity / NFP itself the reporting on how the funds are applied is not part of the reporting process but rather part of the overall charity annual reporting process.

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?

The website of the charity / NFP can contain information.

Corporations Law dictates the business documentation which includes correspondence must include the ABN.

At paragraph 61 there is the suggestion that the lack of an ABN in electronic communications will indicate a breach of the law.

Anecdotal evidence indicates that when a person seeks to generate an email that fraudulently purports to be from a particular entity, that person will copy the website pages / target entity information exactly so as to create an appearance of authenticity. Someone who is doing this will copy the ABN as part of the information shown on the website.