



Charitable Fundraising Regulation Reform

SDN's Response to Discussion Paper and Draft Regulation Impact Statement (April 2012)

SDN Children's Services is a not-for-profit organisation established in 1905. We are one of Australia's most experienced and trusted leaders in early childhood education and care. SDN is a holistic children's services organisation providing mainstream child care and pre-school for 3,000 children in NSW and the ACT, as well as specialist services for children with high support needs and for families facing challenges.

SDN has a wholly owned subsidiary, SDN Child and Family Services, which is responsible for government program contracts and charitable fundraising. SDN Child and Family Services is a Public Benevolent Institution and is a Deductible Gift Recipient under Item 1.

SDN is pleased to have the opportunity to respond to the consultation paper on the reform of charitable fundraising legislation, and makes the following comments on specific consultation questions:

Consultation Questions - Chapter 2

2.1 It is necessary to have specific regulation that deals with charitable fundraising Please outline your views.

Yes but applying nationally and with no other state regulation. Specific regulation for charitable fundraising is important to have, to ensure regulation of the sector but also to give donors confidence in the sector. Donors expect that the money or goods they donate to a charitable organisation or the money they spend at a charitable event will be used by that charity for a specific cause or activity, because they believe that the charity can more effectively apply the donation to the cause than they could as individuals. This means a charity is essentially holding the money or goods in trust to be used for the purposes donated, which makes the transaction type different to most other everyday monetary transactions such as a purchasing a product or service. Fundraising transactions needs to be transparent so the donor can have confidence in the whole transaction chain, and charities, who are acting as facilitators, must be accountable to the donor. Regulations around the fundraising transactions need to be specific to this particular type of transaction.

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.

Our organisation primarily operates in NSW. To minimise the financial cost, it is essential to have set of consistent regulations across all states.

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?

Information on website is not clear and sometimes out of date.

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

These activities should not be exempted from regulation as they rely on the trust of the donors that any donations are handled appropriately and applied as promised. It may not be necessary for all aspects of the regulations to apply, but the fundraisers still have a fiduciary and moral responsibility

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

No

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.

No. Consistency across states required.

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

There must be only one area for compliance for any one entity group nationally. An organisation that has a group of charities that in total are >\$50,000 but individually may be less than \$50,000 may be able to elect to have compliance.

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 - there needs to be one set of rules from one level of government, not both. Given that the tax concessions and DGR status are controlled nationally, fundraising regulation should also be national.

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?

One year to 18 months. It should be applicable at the start of the following financial year of each entity.

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

To regulate the legislation or provide advice regarding compliance.

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

Yes if the registration conditions ensure the organisation is valid for fundraising based on the rules of compliance.

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

No – conditions should be in place at registration stage of being a charity. One rule of compliance.

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

Misleading or deceptive conduct in the promotion of the fundraising, evidence of fraud or misuse of funds, and being insolvent should all lead to being banned. The ban should last until the organisation can demonstrate through an independent audit or similar that they are they are financially responsible. A 'three strikes' rule should result in a permanent ban.

Consultation Questions – Chapter 3

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

Yes but clear best quality guidelines need to be available by the ACNC.

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

Yes, calling hours should be regulated to 9.00am to 7.00pm or 8.00pm, but no later.

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?

SDN doesn't actively sell or solicit outside of its organisation.

Consultation Questions – Chapter 4

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

Charities need to state their ABN unless <\$50,000.

Charities should be required to comply with the same laws that apply to other businesses.

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, SDN is of the view that in the interests of transparency, information about paid collectors and the charity undertaking the fundraising should be disclosed.

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

If dealing with public soliciting.

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

Yes - all details ABN/DGR status information and the purpose of the charity and for which the funds 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?

Absolutely and a receipt with relevant details given. Whether or not a donation is tax deductible is an important element in decision making for many donors, and all charities should be required to state whether they have DGR status and whether or not the gift is tax deductible, so as to avoid misleading or confusing potential donors.

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

None.

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 – many organisations are already juggling different requirements for their public documents including multiple contact details, required disclosures and promotional statements such as websites and social media sites. The additional requirement of adding ACNC details would add to this burden, and would be confusing to many recipients of these documents who would not understand the role of the ACNC or the reason for their contact details being on the documents.

Consultation Questions – Chapter 5

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

Many organisations, including SDN, report on the qualitative aspects of their work through their annual reports, websites and supporter communications. However, there is no standard framework for assessing these elements even within sectors, so any requirement

to report against qualitative elements would need to be within a framework that could apply across all sectors.

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?

Charities should be required to report at an aggregated level on the outcomes of similar types of small activities or for major events or campaigns. Reporting on every activity is impractical, as this would require, for example, allocation of overheads to each minor event or splitting of bulk purchase costs such as printing or merchandise. Likewise many activities serve more than one purpose, for example donor engagement and communication as well as fundraising. If reporting is required, it should be made which costs need to be allocated to the event, eg what amount of accounting costs should be allocated directly to the event or activity as opposed to allocating a fixed proportion of overheads.

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

A standard chart of accounts or standard reporting or acquittal requirements consistent with the Government national standards of reporting and Chart of Accounts. The requirements should give clear indication of how particular overhead costs should be treated, or else how they should be explained in notes so that donors and other stakeholders can have more confidence they are comparing similarly prepared accounts.

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

See 5.3 above.

Consultation Questions – Chapter 6

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

Yes – it is easy to set up a store front and online payments systems and operate with the appearance of a professional charity. Donors need to have the ability to check quickly and easily that they are dealing with a registered organisation that is regulated by a third party.

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 – stating this information is not impractical, it can be embedded into templates that are auto-generated. In the interests of transparency, it should be easy for a donor to correctly identify a charity and confirm its legitimacy and registration details.

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

None in addition to current security requirements for online placements and managing privacy issues.

Consultation Questions – Chapter 7

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

Some regulation is required. Current regulation in NSW requires third party fundraisers to submit details of the fundraising activity to the charity and obtain a letter of authority from the charity – while this is sensible in principle, in practice it can be difficult to police if we are dealing with third party fundraisers that are not part of an organisation. Many people in the community are not aware that they need to do seek authorisation to fundraise, and in many cases charities don't know the fundraising activity has taken place until after the event. It may be more practical to regulate third party fundraising over a certain dollar amount and/or for particular types of events and/or under particular conditions eg if the charity's logo is being used.

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

Yes, this would resolve the issue of community fundraisers and individuals not realising they need permission before they can fundraise for a charity, however it still leaves the way open for potential fraud by an individual or group.

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 –see SDN's response to 7.1 above – many community fundraisers would not be aware of this requirement even if it was implemented, and for fundraising undertaken by a collection of people (eg parents for a pre-school), the issue would be who from that group would register. Registration should be required if the third party fundraiser is obtaining a benefit from the activity.

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

Yes - see SDN's response to 7.1 above – this assumes community fundraisers are aware of the requirements, however this would be appropriate for third party fundraisers that are professional fundraising organisations or corporations otherwise obtaining a benefit from the activity.



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 - see SDN's response to 7.1 above – for community fundraisers, this assumes they are aware of the requirements. However any third party fundraiser that is being paid for their services is sufficiently professional to be required to make such a disclosure.

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

Yes - see SDN's response to 7.5 above – any third party fundraiser that is using paid labour to fundraise is sufficiently professional to be required to make such a disclosure.

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

Yes – private participators are generally corporate entities who are engaging with a charity ostensibly for corporate social responsibility objectives, but this type of fundraising activity, either as a third party fundraiser, matching donations, or through cause related marketing, is still usually a commercial decision on the part of the private participator, which is seeking reputational benefits both with external stakeholders and with their own staff, as well as potential commercial benefits such as increased sales volumes. Also, given the volume of donations a major campaign can raise, it is important that the process and reporting are transparent. It is also important that donors can see the level of commitment from private participator, so that information up front such as whether there is a cap on donations or information after the event, such as total final donations, is obvious.

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