



5 April 2012

Manager
Consumer Policy Unit
Infrastructure Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT

By email: NFPReform@treasury.gov.au

Dear Sir

Discussion Paper: Charitable fundraising regulation reform

The Institute of Chartered Accountants in Australia (Institute) welcomes the opportunity to make a submission to the Treasury to assist with its consultations on the reformation of charitable fundraising regulations.

We represent over 50,000 Chartered Accountants in Australia. Many of our members are involved in the not-for-profits (NFP) sector as directors, treasurers, accountants or auditors (in either paid or voluntary capacities) and are therefore passionately interested in the topic. Over the past few years we have regularly made submissions to both Commonwealth and State governments and at times presented evidence to inquiries on NFP issues.

Our most recent submissions relate to the various consultation documents regarding the soon to be established Australian Charities and Not-for-profits Commission (ACNC) namely

1. Consultation paper for review of not-for profit governance arrangements;
2. Exposure draft legislation to establish the ACNC; and
3. Consultation paper on the implementation design.

As these previous submissions have stated we strongly support the government in its commitment to strengthening the NFP sector, including the establishment of the ACNC. We agree with the overall objective of streamlining and reducing the bureaucratic and administrative burden faced by the sector.

General comments on the discussion paper

Following on from our previous submissions we also strongly support the establishment of a nationally consistent approach to charitable fundraising regulation. We agree that State and Territory fundraising legislation is a significant cost for the NFP sector, particularly for charities operating at a national level, who have to comply with multiple legislative and administrative requirements. We would welcome the establishment of a principles based national legislation that would result in a reduced compliance burden for the sector.

GPO Box 9985
in your capital city

Customer Service Centre
1300 137 322

NSW
33 Erskine Street
Sydney NSW 2000
Phone 61 2 9290 1344
Fax 61 2 9262 1512

ACT
L10, 60 Marcus Clarke Street
Canberra ACT 2601
Phone 61 2 6122 6100
Fax 61 2 6122 6122

Qld
L32, 345 Queen Street
Brisbane Qld 4000
Phone 61 7 3233 6500
Fax 61 7 3233 6555

SA / NT
L11, 1 King William Street
Adelaide SA 5000
Phone 61 8 8113 5500
Fax 61 8 8231 1982

Vic / Tas
L3, 600 Bourke Street
Melbourne Vic 3000
Phone 61 3 9641 7400
Fax 61 3 9670 3143

WA
Ground, 28 The Esplanade
Perth WA 6000
Phone 61 8 9420 0400
Fax 61 8 9321 5141



Priority must be given to obtaining agreement from the States and Territories to repeal their legislation as soon as possible so as to reduce duplication of compliance. However we agree that charities could still benefit from the considerable experience and expertise by State and Territory governments in administering fundraising laws. This could be achieved by the States and Territories applying a national fundraising law as a law of each jurisdiction.

Comments addressing your specific consultation questions follow in appendix 1.

If you have any queries on our comments please contact Ms Kerry Hicks, the Institute's Head of Reporting via email at kerry.hicks@charteredaccountants.com.au.

Yours sincerely

Yasser El-Ansary CA
General Manager – Leadership & Quality
The Institute of Chartered Accountants in Australia

Appendix: Detailed Answers to Consultation Questions

Chapter 1 - Introduction - no consultation questions

Chapter 2 - Defining the scope of regulated activity

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

Given that the primary objective of fundraising legislation is to protect the charitable sector and the public against persons or entities falsely identifying themselves as charities or misrepresenting the purpose of the entity or fundraising activities then it would appear necessary for there to exist specific regulation to achieve this objective. We agree the aim of charitable fundraising regulation should be to ensure public confidence and trust in fundraising. However, we also temper this with the need to keep administration and reporting to the minimum and to eliminate any duplicate reporting.

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.

No comment.

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?

No comment.

2.4 Should the activities mentioned be exempt from fundraising regulation?

We would like to see a broad principle developed for excluding activities from the fundraising regulation. We assume from the examples given the broad principle would be to exclude activities where donors can require information and regular reporting on the outcomes from funding provided to charities, where potential donors are in a position to conduct due diligence and where the recipients of funds are personally known to the donors. Any principle developed should exclude those entities that legally cannot raise funds from the general public such as private ancillary funds.

The notion of a 'sophisticated donor' could be used as part of developing a principle. This would include any corporate entity or individual possessing sufficient financial knowledge to conduct their own investigations. A further consideration to the principle could be the notion of 'unsolicited donations'.

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

Rather than incorporating additional activities, we recommend the development of a broad principle including all the concepts mentioned at 2.4.

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 comment.



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

In general we are concerned that the size definitions proposed to cover NFPs and charities are set too low and will impose excessive regulation on smaller groups. We have outlined our concerns in this area in previous submissions.

We do not agree that the national fundraising legislation should be limited to large amounts, especially if the result of this would be to keep state/territory regulations below those thresholds. A simpler approach is to apply one piece of legislation to any organisation of any size. However, we consider it may be necessary for some proportionate application of this legislation.

In our view there needs to be clear advice and information on combining donations from a local to a national level with the goal of eliminating duplicate reporting. For example; we note that a state association which is part of a national group may raise funds as part of a national campaign. Each local association may raise a small amount of money and pass this in full to the national body- in which case the combined amount may be very significant. In our view it is not appropriate for each local association to report but it is appropriate for the national body to report on behalf of the local groups.

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 we do not agree that smaller entities should remain subject to State or Territory fundraising legislation. All entities should be regulated by national regulation albeit through some proportionate application. The ACNC and various charities would still benefit from the considerable experience and expertise by State and Territory governments in administering fundraising laws. This could be achieved by the States and Territories applying a national fundraising law as a law of each jurisdiction (the application of laws approach). We prefer this approach to the second option suggested whereby the States and Territories enact "mirroring" legislation.

However whichever mechanism is adopted, it is critical that organisations are not required to report to more than one regulator. Until states cede fundraising regulation to the national regulator, the state legislation should prevail.

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?

Yes, a two year transition period should be given to allow an organisation to complete its current financial year and to begin the next financial year with the new regulations and reporting.

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

We support the approach described in the discussion paper allowing all registered with the ACNC to be authorised to engage in fundraising activities across Australia. We agree this approach would have the benefit of reducing complexity for participants in the sector and improve transparency. The ACNC should not duplicate other regulators such as ASIC or the ATO.

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

Yes and this should be at the time of initial registration.



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

In order to obtain the authority to fundraise charities should not be subject to any additional conditions to those contained in the current State and Territory fundraising regulation. ie the conditions should be no more onerous than those that currently exist. However charities should take an undertaking to abide by the legislation upon registration.

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

Any serious breach of the regulation or illegal activity legislation should result in bans from fundraising. The time period of the ban should reflect the seriousness of the breach.

Chapter 3 - Regulating the conduct of Fundraising

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

Yes, it makes sense to prohibit the behaviours as described in the generic consumer protection provisions where goods or services are supplied in the course of trade or commerce.

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

Yes, consistent with the provisions in 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?

In our view the behaviours covered by the ACL should be applied by the ACNC.

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, charities should be required to state their ABN on all public 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, at the point of the collection. This should be a simple statement of this fact in addition to the items we have previously noted:

- The name(s) of the beneficiary
- The purpose of the fundraising campaign
- What amount is aimed for
- What will be done with extra money raised
- What will be done if money less than the target is raised
- What percentage of the money raised will be provided to the beneficiary
- A contact name, or phone number or website for obtaining more information.



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, with the information noted in our response to Question 4.2

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, DGR status should be disclosed so that taxpayers are clear about which donations they can claim as tax deductions

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

Yes, with the information noted in our response to Question 4.2

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, not all public documents should need to provide this information. However, we consider there should be a link to the relevant ACNC page on the organisations website, annual report or document which provides explanatory information about the organisation.

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?

Yes but in summary form and on an annual basis. Individual donors should not be required to be disclosed.

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?

The phrasing of this question implies that charities are remitting or passing funds to other charities. This would not be the case for a great proportion of charitable entities.

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

We do not consider that any specific requirements are required over and above the regular annual reporting and audit processes.

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

Our response is consistent with that in 5.3.



Chapter 6 - Internet and 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

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

In our view there would be many practical issues with technology-specific restrictions. However it is our view that the ACNC has a role to inform the public about scams and fraudulent requests for donations.

It is also our view that donor's credit card details should not be retained by the receiving organisation after the time required to process the donation.

Chapter 7 - Fundraising by third parties on behalf of charities

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

We believe that regulation is required to cover commercial (for profit) third-party fundraising but that this regulation should not cover organisations or individuals who only provide advice on fundraising. We also suggest that licenced commercial fundraisers should be required to lodge a bond with the ACNC which would be forfeited in the event of insolvency, bankruptcy if an individual), or proven misappropriation of donated funds.

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

Yes

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

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

Yes and the information noted by us in our answer to question 4.2

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 they should be required to disclose that they are collecting on behalf of a charity however they should not be required to state the fees in other than a percentage of the donated money.



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 the private participators do not receive any fees for their role. If they receive a fee then they should be treated as a third-party fundraiser.

