



5 April 2012

Charitable Fundraising Regulation Reform Discussion
Paper
Infrastructure, Competition and Consumer Division
Treasury
Langton Crescent
PARKES ACT 2600

Phone: 07 32139213
Fax: 07 32139489
Officer: Peter Carne
Email: Peter.Carne@pt.qld.gov.au
Ausdoc: Ausdoc: DX239

Our Reference: **CHARITABLE FUNDRAISING REGULATION REFORM**

Dear Sir/Madam

The Public Trustee of Queensland welcomes the Government's commitment to maintaining the integrity of the Not for Profit Sector through an increased level of governance, transparency and certainty. In response to the discussion paper on *Charitable Fundraising Regulation Reform* Public Trustee of Queensland would like to take the opportunity to provide feedback on the practical administrative questions raised in the discussion paper.

Background

The Public Trustee of Queensland is Trustee for several of Queensland's leading philanthropic charitable trusts. In the main these Trusts maintain their capital in perpetuity for future generations of Queenslanders. Some Trusts continue to grow their capital bases due to the generous support of philanthropic minded people who choose to leave a lasting legacy to Queensland. The continued support and growth of these Trusts very much relies on the perpetuity provided through the preservation of capital.

The philanthropic charitable trusts maintained by the Public Trustee of Queensland have provided a direct source of funds for over 180 charitable organisations in the last 12 months. The ongoing resources provided by these public ancillary funds assist local and national charities to achieve lasting differences in areas of significant need.

The major funds include The Queensland Community Foundation; Lady Bowen Trust; Forde Foundation; the Queensland Aboriginal and Torres Strait Islander Foundation and the Gladstone Foundation. These five major trusts maintain a combined capital base of approximately \$75.5m.

In addition the Public Trustee of Queensland also maintains an important role in ongoing perpetual charitable funds established by the Wills and Codicils of its clients.

General Comments

The Public Trustee of Queensland supports a framework for a new nationally consistent approach to the regulation of charitable fundraising. In general terms the legislative framework should function to uphold both consumer protection and greater integrity within the fundraising process.

The legislative framework for charitable fundraising should be consistent with that which is applied to other sectors in the economy through existing commercial legislation. Namely, the Public Trustee of Queensland agrees that extending the provisions of the Australian Consumer Law (ACL) to fundraising activities is an effective and efficient way to regulate fundraising. Should the existing State and Territory regulations on charitable fundraising remain, then the Public Trustee of Queensland considers that such regulation should become uniform as to reduce red tape and streamline reporting across multiple jurisdictions.

Specific Comments

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

The Public Trustee of Queensland considers that specific charitable fundraising legislation is necessary in order to promote public confidence in the sector. Further, it is the view of the Public Trustee that such legislation should be consistent with existing commercial legislation for consumer protection.

2.4 Should the following activities – soliciting government grants; corporate donations or donations from public and private ancillary funds; workplace appeals for colleagues; donations to religious organisations from their own members; and, lotteries and raffles regulated under State or Territory law- be exempted from fundraising regulation?

In the interest of promoting a consistent approach to the regulation of charitable fundraising, the Public Trustee of Queensland considers that the above activities should not carry an exemption. For basic fundraising matters wherein existing state and Territory regulation already grant exemptions there would no doubt be qualifications to this position.

2.5 Are there additional fundraising activities that should be exempt from fundraising legislation? If so, please provide an explanation of why the relevant activities should be exempt.

No. The Public Trustee of Queensland supports a nationally consistent approach to regulation of charitable fundraising.

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

No. The Public Trustee of Queensland supports the adoption of national fundraising regulation. It would be considered a compromise to the consistency of the framework should a threshold level be applied.

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?

The Public Trustee of Queensland believes in a national set of principles based legislation.

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?

A transition period of 1 year would be reasonable.

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

Yes. The Public Trustee of Queensland considers that to effectively reduce red tape and streamline reporting across multiple jurisdictions, automatic authority for fundraising activities should be granted to charities registered with the ACNC.

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

The Public Trustee of Queensland considers that the precluded conduct should be consistent with the expectations outlined in the ACL.

3.1 Should the following provisions of the ACL – misleading and deceptive conduct; unconscionable conduct; false and misleading representation; and, harassment and coercion – apply to the fundraising activities of the charities?

Yes. The Public Trustee of Queensland considers that the incorporation of such provisions from the ACL will provide greater consistency through a single set of consumer expectations across all sectors of the economy (e.g. not for profit and charitable sectors).

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

The Public Trustee of Queensland would support the regulation of such and considers that permitted calling hours should be consistent with the ACL.

3.3 Should unsolicited selling provision of the ACL be explicitly applied to charitable entities? Alternatively, should charitable entities be exempt from the unsolicited selling provisions of the ACL?

Yes, the unsolicited selling provisions of the ACL should be explicitly applied.

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

Yes, without exceptions, all 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?

The Public Trustee of Queensland considers that persons engaged in charitable fundraising activities should be required to disclose the name of the entity for which they are collecting.

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?

The Public Trustee of Queensland considers that unattended collection points should be appropriately signed with additional contact and ABN details.

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.

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

The Public Trustee of Queensland does not consider it necessary for fundraising legislation to cover reporting requirements. Issue of appropriate reporting is already addressed in other regulatory provisions (e.g. PuAF requirements).

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?

No. The Public Trustee of Queensland does not see the need of such reporting for a fundraising activity. The exception being within various annual report formats. Reporting should not be covered by this legislation.

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

No. There is already sufficient legislation which determines reporting requirements. Reporting should not be covered by this legislation.

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

Yes. This should provide greater certainty for consumers when making donations to charities.

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

The Public Trustee of Queensland considers that third party fundraising should be regulated to the same extent as it would be regulated for the ultimate beneficiary.

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

No.

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?

Whilst the Public Trustee of Queensland considers that third party fundraisers should be required to disclose which charity they are collecting for, there is no apparent public benefit for disclosure of the fees that they are paid for their services.

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

No.

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

No.

Thank you for the opportunity to provide input for this discussion paper.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Carne', with a long horizontal flourish extending to the right.

**Peter Carne
Public Trustee**