



Submission to the Treasury

Charitable fundraising regulation reform

This submission addresses the issues outlined in the 'Charitable fundraising regulation reform. Discussion paper and draft regulation impact statement'.

April 2012

Introduction

This submission briefly outlines some of the key issues for Australia's not-for-profit sector in response to the release by the Treasury of the 'Charitable fundraising and regulation reform - Discussion paper and draft regulation impact statement'.

This submission has been prepared with the members of the Community Council for Australia (see Attachment 1 listing of CCA members) as well as other key organisations and individuals working in and with the not-for-profit sector.

It is important to note that this submission does not over-ride the policy positions outlined in the individual submissions from CCA members. In endeavouring to provide concise and useful input in response, this submission is divided into the following sub headings:

- Introduction
- About CCA
- Informing Principals for New Fundraising Regulation
- Response to Discussion Paper Questions
- Conclusion

The CCA welcomes this opportunity to comment on the proposed framework for a nationally consistent approach to regulation of charitable fundraising. CCA is willing to engage in further discussion about any of the issues raised in this submission.

The Community Council for Australia

The Community Council for Australia is an independent, non-political member-based organisation dedicated to building thriving communities by enhancing the extraordinary work and effort undertaken within the not-for-profit sector in Australia. CCA seeks to change the way governments, communities and the not-for-profit sector relate to one another. This includes establishing a regulatory environment that works for community organisations and not against them.

The mission of CCA is to lead by being an effective voice on common and shared issues affecting the contribution, performance and viability of not-for-profit organisations in Australia through:

- providing thought and action leadership
- influencing and shaping sector policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with the government, the business sector, and the broader Australian community.

Informing principles for new fundraising regulation

1. Never has it been more critical for charities to diversify their income and build their capacity. For this reason, CCA believes the first principle of any proposed new fundraising regulations should be to encourage and support fundraising activities by charities.
2. While increasing the transparency of charities is desirable, no evidence has been presented to indicate the Australian public lack trust in charities or are concerned about information asymmetry. The goal of any new regulation should not be seen as addressing a market failure, but of promoting more charitable giving.
3. The current regulatory system applying to charities engaged in fundraising is, at best, very difficult and time consuming for charities to negotiate and comply with. Having separate jurisdictional fundraising regulatory regimes in Australia is not justifiable, especially given the diminishing relevance of geographical boundaries.
4. CCA is generally opposed to the establishment of new or additional regulations and compliance burdens for charities unless there is good evidence that in the medium to longer term the proposed new regulations will contribute to efficiencies, a reduction in compliance costs, and further increase public trust.
5. Any proposed new fundraising regulations must take account of existing more generic laws including the criminal law, corporations and associations incorporation law, consumer protection laws, common law and others. Most fraudulent activity, misrepresentation and misuse of funds raised is covered by these laws and duplication of these in any new fundraising regulation would not make sense.
6. It is the purpose of the charity and the degree to which money raised is directed towards the charitable purpose that matters, not the nature of the fundraising activity undertaken. Trying to define public benefit by the actual fundraising activity rather than whether the funding raised will be used to fulfil a charitable purpose creates fundamental definitional problems and may needlessly restrict fundraising in Australia.
7. CCA supports the development of new charities fundraising regulation to the degree that new regulations will enable a real reduction in compliance costs and limit the duplication associated with jurisdictional fundraising regulations.

This submission provides brief responses to the questions outlined in the discussion paper. The principles above have informed all the CCA answers to these questions.

Response to Discussion Paper Questions

Is regulation necessary?

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

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.

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?

The current situation is that seven of the eight jurisdictions require charities to register and comply with regulations if they intend to undertake fundraising activity in that jurisdiction. This means one organisation can be required to register seven times and comply with seven different sets of regulations for one fundraising activity that crosses geographical boundaries. Some of the compliance requirements are much more onerous than others. In NSW and SA the compliance burden is significant. In the NT there are limited compliance requirements.

This situation is not desirable, particularly given that many fundraising activities draw on media and communications technology that is not restricted to one geographical area. A public appeal for donations in one jurisdiction may have an internet presence that is viewed by people around Australia and internationally.

The compliance burden is one of many imposts on charities. The growing need for charities to be able demonstrate how they contribute to achieving real outcomes for the communities they serve also requires the additional allocation of time and resources to documenting activities and following up on outcomes achieved over time. This need for transparency is often not underwritten by government and other funders. It becomes one of the areas where charities need to apply their discretionary funding, much of which comes from fundraising.

Over 4 million Australians volunteer to work in charities and Australians donate more than \$2 billion each year. There is no evidence to suggest public confidence in charities is falling – if anything the increasing engagement of Australians in charities suggests the opposite.

Charitable fundraising regulation is not necessary, but it is desirable at least to the degree that it can reduce duplication and compliance costs for charities.

Defining fundraising activities that are to be regulated

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

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

CCA does not see the development of project funding proposals and submissions as part of fundraising activity and supports exemptions from fundraising regulations for the following:

- Soliciting for government grants
- Seeking corporate partnerships or project funding from corporate entities
- Seeking funding from public and private ancillary funds
- Seeking partnerships or project funding from Trusts and high wealth individuals
- Donations to religious organisations from their own members
- Smaller scale local fundraising activities raising less than \$50,000 per annum.

There is very limited benefit in seeking to regulate appeals for individuals and families within communities including work communities (colleagues), sporting communities, local geographic communities, but it is difficult to know how to establish clear definitional boundaries around such activities. For this reason CCA supports an exemption on smaller scale fundraising.

Abuse of any of the above exemptions would be covered by a range of other laws and regulations including the Australian Consumer Law (ACL, Consumer & Competition Act 2010), common law and criminal law.

The application of fundraising regulation also needs to take account of the medium being used. In practice, this means the kind of information requirements that may be incorporated into new fundraising regulations should make allowances for the nature of the activity. A mass media campaign to sponsor a child might have slightly different requirements for information disclosure than a car wash to raise money for a local scout group, or a door to door sign up campaign for a national welfare group. It is also much easier to provide detailed information on a website than it is for a mobile phone giving campaign. While the core information requirements might be consistent across all fundraising activities, there will be variations in the extent and nature of the information disclosure that is appropriate.

Without these variations in reporting requirements there will be a much stronger case for exemptions of various forms of charity fundraising from the regulations. The more exemptions that are required the less relevant new regulations will be.

Implementing a national approach

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.

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

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?

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 noted above, CCA supports an exemption for smaller scale charitable activities up to a maximum of \$50,000 per annum. Such activities pose minimal risk and any misrepresentation or misuse of funding raised is covered by existing laws. States and Territories should not separately regulate these activities.

In terms of compliance burden, the larger the charity the smaller the percentage of resources needed to meet compliance costs. A small charity running a national fundraising campaign will have relatively high overheads compared to a larger charity raising more funds and able to allocate a smaller proportion of the money raised to support the necessary compliance and other costs.

The transition to national regulation of fundraising will take time given the need for each jurisdiction to either adopt the national approach or in some way refer their existing regulatory activity to the new national fundraising regulations.

New national fundraising regulations should only apply where State and Territory fundraising regulations no longer apply. To simply introduce new national regulations while retaining all the existing jurisdictional requirements would add to the compliance burden and serve no useful purpose.

The transition phase may involve some level of voluntary compliance from charities with new national regulations until fundraising regulations in particular jurisdictions no longer apply.

Registering for fundraising activities

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

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

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

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

CCA supports the ACNC acting as the regulator for charitable fundraising. Any requirement to separately register with State and Territory regulators should be avoided, in order to reduce the compliance burden and its associated costs.

Charities registered with the ACNC should be authorised for fundraising activities.

Conduct that is misleading or deceptive within the definition of the ACL and has resulted in a conviction or successful civil action should result in a review of a charity's authority to fundraise. Insolvency should result in an automatic withdrawal suspension of the authority to fundraise.

It is important that the ACNC has the power to investigate and enforce these provisions, and also determine the extent of any suspension or ban applied to individual charities. The circumstances in which a suspension might be applied will vary greatly from repeated minor mistakes to large scale and deliberate misrepresentation. The ACNC should have the capacity to impose penalties that are proportionate to the nature and extent of improper behaviour by individual charities.

Application of consumer protection laws to charitable fundraising

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

CCA supports the application of the ACL to fundraising activities with some appropriate exemptions around information provision (as discussed later in this submission).

Charitable fundraising and calling hours

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

CCA supports the application of calling hours restrictions to charitable fundraising activity.

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?

CCA supports the current situation where charities have some exemptions under both the SPAM ACT and the Do Not Call Register Act 2006.

These exemptions also relate to the application of the Australian Consumer Law (ACL) (as discussed later in this submission).

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?

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?

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

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

4.5 Should a charity be required to disclose whether the charity is a Deductible Gift Recipient and whether the gift is tax deductible?

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

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 goal in all fundraising activities should be to ensure additional information is readily available for those seeking to know more before committing to a donation, without requiring all interactions to cover all possible information.

Within this context only the core information donors would require should be made obligatory for fundraising. This includes:

- the name of the charity
- the purpose for which the money raised will be used
- contact details for the charity and where to get additional information
- the name of the person conducting the fundraising and whether they are paid by the charity to fundraise on their behalf and whether this payment is on a commission basis.

CCA supports the provision of an ABN on charitable fundraising material wherever it is possible and appropriate. In some mediums, such as mobile phone giving, the provision of an ABN may be impractical and in some – such as a telephone conversation - the obligatory listing of an ABN may not be useful information. However, in all printed material and on all fundraising websites, the ABN should be provided.

In the case of door to door or face to face soliciting for charitable donations, it may be appropriate to consider specific regulations that apply to charities rather than simply adopting the ACL provisions. Provided the people soliciting for charitable donations clearly identify the core information outlined above, it would not be necessary to provide additional information such as the extent or specific nature of commission arrangements.

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?

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?

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

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

In an ideal world information regarding the social impact of every dollar donated to charity would be available and comparable to other charities operating with similar population groups. In this ideal world there could be a form of stock exchange where people bought and sold charity investments based on the extent of social impact being achieved per dollar invested. It can be very difficult for organisations to identify and attribute the outcomes and impacts achieved through various charitable projects and programs.

The costs involved in collecting outcome and impact information is often very high. These costs have to be considered against what might have been achieved if the same resources had been allocated to improving the charitable project or program being undertaken.

Many people who fund charities expect most of their money to be directed to the charitable purpose rather than information collection and evaluation investments. This tension between allocating resources to direct value adding services or allocating the resources to support activities such as evaluation is a very real challenge, particularly for smaller and medium sized charities.

Regulating a requirement to document outcomes and impacts simply will not work because very few charities could meet this requirement. At the same time it may well be a future goal to improve the level of outcomes reporting.

Similarly there needs to be a level of caution in relation to reporting requirements such as the need to outline the costs of fundraising activities and their returns. Some activities do not provide a great return immediately and may even lose money, but offer longer term engagement and build future funding support. How can the engagement of a new donor be accurately attributed to one particular action by a charity? Was it the advertisement on TV, the special article about the issue, the open day, the direct mail campaign, or the fact that someone they knew spoke highly of the charity?

Some transparency around fundraising reporting is required, but it needs to be presented with very clear qualifications about the numbers and comparisons, and exactly what the numbers do and do not mean.

It seems logical the ACNC take on this role of publishing details relating to fundraising, however, it is important to ensure any requirement relating to reporting on fundraising is contained within the broader financial reporting to the ACNC. The same principle applies to auditing. If the fundraising report is part of the audited reporting undertaken every year by larger charities, then it requires no additional audit and can be accommodated with minimal additional compliance cost.

In terms of record keeping, all charities should keep accurate records about who has donated what amount, for what purpose and under what fundraising campaign. They should also be required to report in a publicly accessible way about how the monies raised have been used. This may take the form of descriptions of activities or provide more detailed outcome information.

Internet and electronic fundraising

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

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?

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

CCA believes that only registered charities should be able to conduct electronic and internet fundraising.

As noted earlier, CCA believes that where practical – on all printed materials and websites – the ABN should be clearly stated. SMS communications should be excluded from this requirement given the SPAM ACT already imposes certain mandatory requirements.

Fundraising by third parties on behalf of charities

- 7.1 Is regulation required for third party fundraising? If so, what should regulation require?*
- 7.2 It is appropriate to limit requirements on third party fundraising to those entities that earn a financial benefit?*
- 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?*
- 7.4 Should third party fundraisers be required to state the name and ABN of charities for which they are collecting?*
- 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?*
- 7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?*
- 7.7 Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?*

CCA believes that it is appropriate to adopt a definition of third party fundraisers as entities that raise funds on behalf of a charity in return for a financial or other direct benefit. Voluntary fundraisers should not be seen as third party fundraisers under this definition.

CCA also supports the requirement for all third party fundraisers to state the name (and ABN where printed or web material is involved) of the charity they are fundraising on behalf of, to disclose that they are working on behalf of this charity, and to provide contact details for the charity.

Disclosure about the amount fundraisers are receiving and the amount going directly to the charity is somewhat more problematic given that commissions are not always clear and can depend on factors such as the longer term performance of people signed up as donors. It is also often difficult to accurately attribute amounts raised from specific events - donations may be a result of several campaigns run over a period of time as well as other organisational and individual activities (news stories, personal experiences, etc.).

It may be appropriate to not provide new separate legislation but to consider a voluntary self-registration system for third party fundraisers. This could be a sub section of the ACNC website and enable details of third party fundraising organisations and their activities to be made publicly available. Beyond this self-regulatory approach, it is difficult to justify the administrative and other costs of developing and sustaining a more formal regulation or accreditation program for all third party fundraisers.

Conclusion

CCA is not opposed to the establishment of new national charitable fundraising regulations provided it is a way of reducing duplication and compliance costs.

While increased transparency and clear reporting around fundraising activities is desirable, caution needs to be exercised to ensure charities engaged in good practice, such as those investing in detailed evaluation and outcomes measures – are not penalised through league table comparisons and other superficial reporting.

The strategy of providing a core set of information, but also encouraging donors to access more detailed information from the charity should be implemented.

The real goal is to encourage greater donations and ensure donations are directed towards charitable purposes, while at the same time not increasing duplication, red tape and compliance costs for charities.

CCA look forward to working towards a reduction in the number of jurisdictions applying their own charitable fundraising regulations and the implementation of a truly national light touch set of fundraising regulations administered through an independent and responsive ACNC.

Current Membership – Community Council for Australia (January 2012)

1. Aboriginal Employment Strategy Ltd. – Danny Lester
2. Alcohol and other Drugs Council of Australia – David Templeman
3. Alcohol Tobacco and Other Drugs Association ACT – Carrie Fowlie
4. Associations Forum Pty. Ltd – John Peacock
5. Australian Indigenous Leadership Centre – Rachelle Towart
6. Australian Institute of Superannuation Trustees – Fiona Reynolds
7. Australian Major Performing Arts Group – Susan Donnelly (Director)
8. Catholic Social Services Australia – Paul O’Callaghan
9. Church Communities Australia – Chris Voll
10. Connecting Up Australia – Doug Jacquier
11. Consumers Health Forum of Australia – Carol Bennett
12. Fundraising Institute of Australia – Rob Edwards
13. Good Start Childcare – Julia Davison
14. Good Beginnings Australia – Jayne Meyer Tucker (Director)
15. HammondCare – Stephen Judd (Director)
16. HETA Incorporated – Sue Lea
17. Hillsong Church – George Aghajanian
18. Illawara Retirement Trust – Nieves Murray
19. Lifeline Australia – Dr Maggie Jamieson
20. Maroba Lodge Ltd. – Viv Allanson
21. Mental Health Council of Australia – Frank Quinlan
22. Mission Australia – Toby Hall (Director)
23. Musica Viva Australia – Mary Jo Capps (Director)
24. Opportunity International Australia – Rob Dunn
25. Philanthropy Australia – Deborah Seifert
26. Principals Australia – Liz Furler
27. RSPCA Australia – Heather Neil (Director)
28. St John Ambulance Australia – Peter Lecornu
29. Social Ventures Australia – Michael Traill
30. Surf Life Saving Australia – Brett Williamson (Director)
31. The ANZCA Foundation – Ian Higgins
32. The Benevolent Society – Richard Spencer (Retiring Director)
33. The Big Issue – Steven Persson (Director)
34. The Centre for Social Impact – Peter Shergold
35. The Smith Family – Lisa O’Brien (Director)
36. The Ted Noffs Foundation – Wesley Noffs
37. Volunteering Australia Inc. – Cary Pedicini
38. Wesley Mission – Keith Garner (Director)
39. WorkVentures Ltd. – Arsenio Alegre
40. World Vision Australia – Tim Costello (Chair)
41. YMCA Australia – Ron Mell
42. Youth Off The Streets – Fr Chris Riley