



**Aged & Community
Services • Australia**

Response

to

**Australian Government Discussion Paper and Draft Regulation Impact
Statement**

on

Charitable Fundraising Regulation Reform

April 2012

Introduction

Aged and Community Services Australia (ACSA) is the national peak body for aged and community care providers representing faith-based, charitable and community-based organisations providing residential and community care services, housing and supported accommodation for older people, younger people with a disability and their carers.

As a representative body for a large number of not for profit organisations, ACSA is keenly interested in the current proposals for the reform of the registration and reporting requirements for the not for profit sector, and in particular welcomes the opportunity to provide comment on the discussion paper which canvasses options for charitable fundraising regulatory reform.

ACSA supports the Australian Government's proposal to create a new framework for a nationally consistent approach to the regulation of charitable fund raising. The objectives of the new framework should be to foster public confidence and trust in fundraising as a means of encouraging voluntary giving for the benefit of the community, and to reduce administrative and compliance costs for the charitable sector and taxpayers. With regard to administrative and compliance costs, it is essential that there is no duplication of regulatory requirements between those contained in the draft Australian Charities and Not-for-Profit Commission Bill and those under national fundraising regulation.

Against this background, the following provides comments on issues raised in the discussion paper.

2. Defining activities that are to be regulated

ACSA supports the proposal to define the fundraising activities and entities to be regulated in broad terms, and then separately exempt those activities and entities for which a case for exclusion from the regulatory provisions can be made.

ACSA notes and supports the exemptions proposed in the discussion paper.

ACSA raises for consideration, however, the addition of bequests to the list of exempted activities on the basis that bequests do not follow the usual process of soliciting and gathering donations from individuals. Somewhat analogous to corporate donations, people making bequests are usually well informed about the mission of the recipient organisation. The decision is usually arrived at after a reasonably lengthy consideration of options and/or after direct experience of the organisation's mission, often as the direct or indirect beneficiary of the activities or services of the organisation. The bequest also often comes with accountability provisions concerning the purposes to which the funds may be applied.

The unpredictability of bequests as to timing and size would also make problematic the use of a financial threshold to determine the coverage of the national regulations. In some cases, a bequest may be effectively a one-off or at least an occasional event.

On balance, ACSA considers that bequests should be included in the list of activities that are to be exempted from the proposed regulatory framework.

Many religious and charitable age care services also provide opportunities for people they care for and their families to make donations through mechanisms such as newsletters and other information sent to people who have agreed to be included on mailing lists. As is proposed for donations to religious organisations, ACSA considers that such donations should be exempted on the basis that these donors are well acquainted with the organisation and its mission.

3. Implementing a national approach to fundraising regulation

ACSA considers that with greater integration of economic and social activities in a digital world, greater workforce mobility and more organisations operating across jurisdictions, it is self-evident that it would be more efficient and effective for all parties - fundraisers, donors and taxpayers - to be working to a common set of fundraising regulations.

In this regard, the Fundraising Institute of Australia provided evidence to the Productivity Commission's Research Report, *Contribution of the Not for Profit Sector*, that 50% of its members are already operating across state borders and are required to be familiar with and to meet the different regulations in each State.¹

Accordingly, ACSA supports a national approach to fundraising regulation and agrees with the statement in the discussion paper that 'in order to reduce the compliance burden on charities, a national approach to fundraising regulation should not duplicate existing State and Territory fundraising regulation'. On the other hand, ACSA is concerned with the accompanying statement in the discussion paper that 'State and Territory governments **may** (emphasis added) decide to exempt those charities covered by the national law from State and Territory fundraising laws.' ACSA considers that the creation of a national system has to be conditional on the elimination of all duplication with State and Territory laws for those entities registered with the national fundraising regulatory system.

The discussion paper envisages a role for both the Australian Government and the State and Territory Governments in the regulation of fundraising activities, particularly for the smaller entities that operate only in one State or Territory. In particular, it proposes that the regulation of the activities of entities raising less than \$50,000 per annum would remain with the States and Territories, unless an entity opts to come within the national system. ACSA notes that all charities wanting access to Australian Government tax concessions, regardless of size, will need to be registered with the Australian Charities and Not for Profit Commission (ACNC). ACSA therefore supports the proposal which would allow all charitable fundraising entities to opt out of the State system in order to avoid overlapping regulatory requirements.

The use of a financial threshold to distinguish those entities that are not required to be regulated under the national system raises administrative issues as entities may fall above or below the threshold from year to year, especially if bequests are not exempt, or if entities only undertake a one off or occasional fund raising campaigns eg for a new building, rather than administer ongoing or regular fund raising programs. Administrative provisions will be required to deal with such circumstances. One policy response might be to have the threshold apply to entities that achieve the threshold over a number of years, such as three consecutive years.

Another issue for consideration is the level of the proposed threshold. ACSA notes that \$50,000 was chosen to avoid imposing disproportionate regulatory costs on smaller entities. A judgement as to the appropriateness of this figure would have been assisted by the provision of data or information on which the \$50,000 level was based eg is there a relationship between the size of an entity and the level of fundraising undertaken; how many entities would be expected to fall above or below thresholds set at a range of levels; and how many smaller entities would be expected to register with the ACNC anyway in order to access tax concessions.

Whatever the threshold level set, it should be subject to indexation to maintain its real value.

¹ *Contribution of the Not for Profit Sector* Productivity Commission (2010)

4. Registering for fundraising activities

ACSA supports the proposal that all charities registered with the ACNC would be authorised to engage in fundraising activities across Australia without being subject to any other requirement for pre-authorisation or notification to a regulator.

5. Regulating the conduct of fundraising

ACSA agrees that a principles-based approach to regulating the conduct of fundraising is preferable to a prescriptive approach as the emphasis on outcomes would allow greater flexibility for timely adaptation to changing circumstances such as technological change, without the delays inherent in affecting legislative change.

In the interest of avoiding unnecessary complexity and potential confusion, ACSA would also support the application of consumer protection laws in Corporations Law, such as unconscionable conduct, false or misleading representations, harassment and coercion, permitted calling hours and unsolicited selling provisions, to nationally regulated fundraising activities.

6. Information disclosure at the time of giving

ACSA agrees that it would be reasonable to require charities to meet minimum information disclosure requirements at the time of giving to allow donors to make better informed decisions and to establish the bona fides of the collector. ACSA has no objections to the minimum information canvassed in the discussion paper, and notes that many charitable organisations would already meet these minimum requirements.

ACSA also supports the proposal that third party fundraisers engaged by charities should also be required to identify themselves as third parties collecting donations on behalf of a charity, as well as to disclose the amount of the donation that will ultimately be received by the charity for which they are collecting.

7. Information disclosure after the time of giving

ACSA notes that the reporting requirements for fundraising will be considered in the context of the broader ACNC reporting requirements and the need to be proportionate to the risks and the amount of funds involved. This includes tailoring record keeping, reporting and auditing requirements to the size of the entity, distinguishing between small, medium and large organisations. ACSA strongly supports the adoption of similar proportionate requirements for fundraising reporting, auditing and disclosure provisions.

ACSA also notes that many fundraising charities will be required to register with the ACNC in order to access Australian Government tax concessions even though they do not achieve the financial threshold that would require them to be subject to national fundraising regulation. This would potentially require some entities to be subject to national fundraising reporting regulations and ACNC reporting requirements included in the draft Bill. ACSA considers that careful attention will be required under the two reporting regimes to avoid duplication. In this regard, there should be no duplication in the reporting requirements under the Information Statement for ACNC registration and the reporting required under fundraising regulation, consistent with the 'report-once-use-often' objective.

ACSA agrees in principle to the reporting of high level information about the amount of funds collected and distributed to beneficiaries, and agrees that this could include information on fundraising costs. We are concerned however that high level reporting without capacity to provide some context may result in misinterpretation of financial data eg overhead costs in delivering services in some locations and for some target groups may be considerably more for some than others. In view of such circumstances, ACSA supports the inclusion of scope in the reporting arrangements for organisations to include qualitative elements, such as outcomes, identification of the beneficiaries and context to aid the interpretation of overhead costs.

8. Internet and electronic fundraising

It is inevitable that internet and electronic fundraising activity which crosses State and Territory borders, and international borders, will grow significantly, and that this growth will present accountability and regulatory challenges.

ACSA considers that internet fundraising for non-exempt activities should be prohibited unless the entity undertaking the fundraising is registered with the ACNC and discloses its ABN in all communications with the public.

The discussion paper also queries whether any technology-specific restrictions should be placed on internet or electronic fundraising. ACSA's view is that additional restrictions beyond those proposed above applying to registration and disclosure of the ABN are not necessary, and would add complexity and cost to fundraising. The proposed measures above would provide sufficient prudential control to ensure the bona fides of fundraising organisations.
