

SUBMISSION IN RESPONSE TO THE DISCUSSION PAPER ON CHARITABLE FUNDRAISING REGULATION REFORM.

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

Australian Red Cross considers that it is necessary and appropriate to provide specific regulation of fundraising activities, in the public interest, through increased awareness, accountability and transparency, as well as through assisting in the reduction of the prospects of fraudulent and/or misleading or deceptive conduct.

Red Cross agrees that the identified current purposes of existing State and Territory regulatory mechanisms (see paragraph 13, Discussion Paper), including avoidance of fraud, efficiency in fundraising and assistance with donors being able to make informed choices, would be amongst the worthwhile objectives of a nationally consistent and balanced regulatory framework.

Q 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.

Australian Red Cross has a national structure and runs its fundraising campaigns nationally to be more cost effective. This means donations come from people across Australia, from all of the States and Territories.

We currently prepare state/territory based financial information solely to comply with state/territory legislation and in some cases prepare and provide the same information multiple times in different formats and at different times to meet jurisdictional license conditions and different timeframes.

Fundraising activities and Art Unions also operate under different state-based regulations, requiring activities to be state-based and replicated in different ways and under different conditions. This remains so, despite some provisions under the law of one State which may provide in limited ways for recognition of fundraising activities in that State, if the specific fundraising activities are permitted in another State. In the absence of a uniform regulatory regime, overall the differences in regulation do add to the time needed to run fundraising efforts and to the complexities of compliance.

Applying for multiple licenses and producing bespoke information increases operational overheads with no commensurate increase in public trust and confidence in the sector.

Q 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?

Quantitative research by Australian Red Cross (Brand Mapping 2011) indicates that public goodwill and trust play an important part in driving donations to charitable organisations.

Qualitative research demonstrates, and general community attitudes and dialogue with potential donors also indicate, a lack of understanding of the necessity of certain costs being incurred by fundraisers (e.g. accounting and audit costs, communication costs such as telephony and broadband) as a basic part of conducting business so as to raise the funds necessary to conduct the charitable activities. It appears that those attitudes and that lack of understanding can limit responsiveness and financial support.

However, Red Cross is currently not aware of any specific quantitative research that investigates the link between legislative framework and public confidence and participation by the community in fundraising activities. It is perhaps a body of work which the ACNC might consider to help inform the legislative process.

Lack of consistent Australia-wide compliance and reporting standards leads to a wide diversity in reported costs of fundraising and other metrics that are used for performance comparisons across charities.

Without nationally standardised reporting metrics and definitions, the community is required to make decisions of financial support without the ability to compare organisations' performance. No evidence is needed to see that this situation is likely to undermine public confidence. Reforms have been made in other sectors, for example the financial services sector, to provide the Australian public some degree of parity on which to base decisions. There is no reason to refuse to provide the Australian public with a similar degree of parity in the not for profit sector.

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

Australian Red Cross believes that fundraising regulation should apply to all forms of fundraising including government grants, corporate gifts, workplace appeals and religious groups. The principles of accountability and transparency apply to all activities irrespective of where the donation is solicited from. There is always the opportunity for misappropriation, whether due to human error or fraudulent activity.

Q 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.

No, Australian Red Cross believes that all activities should be covered by the regulation - however the nature and extent of regulation should suit the scale of the fundraising undertaken. Australian Red Cross has around 15,000 members and 800 Branches around Australia, many of whom conduct their own fundraising activities. These fundraising activities are generally small-scale (e.g. market stalls and door-knocking), but are nonetheless very valuable individually as it is a means for members and volunteers to participate and support the organisation. These activities allow members and volunteers to know that they are contributing to the mission of Red Cross in supporting people in vulnerable circumstances.

In Queensland, existing State Government legislation requires branches to be registered with their own authority to fundraise. The authority to fundraise comes with a set of compliance conditions including an independent financial audit, in addition to organisational policies established on the basis of good governance and regulatory compliance. This carries an extra burden and expense, especially when considered against the amounts raised. Red Cross believes that members, volunteers and branches of a charitable organisation, who are in essence 3rd party fundraisers, should seek and receive their authority to fundraise from the organisation itself, rather than a State or Territory government, subject to Australia-wide rather than State-specific fundraising regulation.

The reform of fundraising regulation should consider these circumstances and provide a regulatory framework which:

- does not discourage groups from fundraising
- allows them to operate within the regulation applying to their charity without the need for separate audit
- provides basic standards for them to follow.

Gaming activities for fundraising purposes of a charity should be included under fundraising regulation to allow a single, consistent framework across all States and Territories rather than the inconsistent approach which currently exists from one State or Territory to another.

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

Australian Red Cross believes that all fundraising activities should practice principles of transparency and accountability and therefore some form of consistent Australia-wide regulation and consistent standards of reporting and disclosure should apply irrespective of the amount to be raised. Where an entity raises less than \$50k per annum, Red Cross supports simplified reporting requirements for such entities.

Q 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?

Please see section 2.7.

Q 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?

Charities should be given adequate time to become familiar, manage and comply with the requirements of a new national law. The new legislation and associated regulations will need to be drafted before a timeframe for their enforced adoption can be set. A minimum possible transition period of two years could be considered.

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

Red Cross supports the suggestion (in paragraphs 27 and 28 of the Discussion Paper) that registration as a charity with ACNC would also provide the means for a charity to obtain an authority to raise funds from the public and deliver specific minimum standards required for consistent reporting and accountability.

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

As a general rule, registration as a charity with ACNC should be a condition of fundraising from the public, but additional requirements may be imposed before the charity is permitted to fundraise from the public.

This approach would standardise and simplify some matters relevant to fundraising, and it would also satisfy those minimum conditions currently required by State/Territory legislation for authorisation to fundraise, such as registration of the identity of the fundraising entity and its address and contact details in relation to fundraising (e.g. s 18, *Fundraising Act* 1998 (Victoria)).

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

Subject to the charity complying with reasonable standards of conduct for all of its fundraising activities, it is desirable for a registered charity to have a general authority to fundraise for its charitable purposes, without it being required to seek authorisation to conduct a particular fundraising appeal for specific charitable activities within its charitable purposes.

It would be appropriate for the standards of conduct to include matters such as a statement of general principles which are to be complied with in raising funds from the public (perhaps derived from or based on those set out in current legislation at State/Territory level), including a statement by the charity in relation to fundraising from the public. Examples include:

- the intended benefit or cause for which the funds are to be raised, either generally or for a particular purpose (see e.g. section 18, *Fundraising Act* 1998 (Victoria));
- the way in which the money raised will be used for the benefit or cause;
- in the case of a fundraising appeal for a specific benefit or cause, how any funds which are raised, but which may be surplus to the specific benefit or cause, may be used;
- transparency of defined, specific costs associated with fundraising

The standards could be set out in a Code of Conduct.

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

Red Cross believes that the existing range of rules and regulations needs to be simplified, condensed and standardised into one Code of Conduct for charities to abide by, before contemplating bans. Issues around the length of any ban and its nature should be considered once a standard Code of Conduct is drafted.

However, in principle, and in a manner broadly similar to that currently provided by State/Territory laws (e.g. see section 23, *Fundraising Act* 1998 (Victoria), non-compliance with the Code of Conduct in material or significant matters or ways could result in bans and/or limitations on fundraising authorisation, or imposition of controls on fundraising activities generally or in relation to particular types of fundraising, following a fair and responsible enquiry and investigation process, with suitable review and appeal rights.

In cases such as fraud, in connection with obtaining the authorisation to fundraise, removal of authorisation for fundraising purposes may be necessary (e.g. section 33A, *Fundraising Act* 1998 (Victoria), again following a fair and responsible enquiry and investigation process, with suitable review and appeal rights.

However, non-compliance with a Code can of course occur in a myriad of ways. Consequently, minor breaches (or breaches of less significant aspects of a Code) should not generally be grounds for removal or restriction of fundraising authorisation except in specific circumstances (e.g. regular or systemic repeated breaches).

Red Cross concurs, for example, with the suggestion in the consultation paper (paragraph 29) that the ACNC should have the authority to place bans on charities that are in breach, but the length of the ban should be based on the severity of the breach and remediation steps taken. Furthermore, any alleged breaches should be referred to an independent panel to review and address.

Procedures of appeal within ACNC, mediation and other suitable dispute resolution practices within ACNC (perhaps modelled on or akin to the 'private ruling' review procedures followed by the Australian Taxation Office) concerning these decisions should be outlined as part of the Code or in some other suitable instrument.

The Consultation Paper suggests that any decision such as a decision to ban a charity from fundraising activities should be reviewable by the courts (paragraph 29).

Any decision which affects the legal entitlements of a charity to fundraise are of course fundamental to its being and purpose, since without a capacity to raise funds from the public, its ability to carry out its charitable purposes will at the very least be substantially diminished or could be actually prevented.

Consequently Red Cross agrees that there should be a means to review decisions by ACNC (generally, after suitable internal review processes have been followed), particularly decisions in relation to matters connected with authorisation to fundraise from the public. Given that the potential for the activities of the charity in connection with its charitable purposes to be severely impeded by an

adverse decision of ACNC in respect of its authorisation to fundraise, consideration should also be given to the date of operation of any decision to affect authorisation to fundraise (so as to allow time to review the decision), at least where the decision is not based on matters such as fraud or dishonesty in connection with fundraising activities. Alternatively, there could be a procedure for the review process or tribunal to itself defer the operation of any such decision, pending review, if there are reasonable grounds to do so.

Moreover, Red Cross submits that it would be highly preferable for there to be a process (for example, in the Administrative Appeals Tribunal, under the *Administrative Appeals Tribunal Act 1975*) in which the merits of a decision by the ACNC in respect of non-compliance with the Code of Conduct could be reviewed on the application of the charity and, if appropriate, the decision of the AAT could be substituted for that of the ACNC.

Separately, in addition, consideration should be given to the question whether the charity should be able to exercise its normal rights of judicial review on the usual range of grounds for those purposes under Commonwealth law in respect of decisions of a body established under Commonwealth law such as the ACNC (see, for example, the *Administrative Decisions (Judicial Review) Act 1977*).

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

Red Cross considers that it is desirable for fundraising activities to be conducted in accordance with stated general principles, rather than there being specific detailed rules about the things that the charity may and may not do. Prescriptive obligations can be unduly onerous and are susceptible to inadvertent breach. Red Cross accepts that the desirability of setting out general principles to govern conduct in respect of fundraising may not be absolute and is subject to some exceptions, such as that discussed below (section 3.2) in relation to calling hours for telemarketing or like activities, where specific directions may be appropriate.

A suitable means for these matters of general principles of conduct to be dealt with (such as the prohibition on misleading or deceptive conduct, false or misleading representations, and so on), would be for these obligations to be included as part of the Code of Conduct which has been referred to earlier and which applies to a charity which is authorised to fundraise from the public.

However, given the nature of the breaches of these obligations (compared to what may be other components of the Code of Conduct), careful consideration is required in relation to the penalties or other remedies which may be sought and applied as the consequences of any breach.

Much of the potential for difficulties in compliance would be reduced through the provision of Guidance Notes in relation to the operation of general legal obligations attached to authorisation to fundraise and to the operation of any Code of Conduct.

A requirement for the development and publication of these Guidance Notes (and perhaps education in their requirements) could be a specific statutory function of ACNC, which could be required to be developed in consultation with stakeholders.

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

Australian Red Cross believes calling hours for fundraising should be regulated, but the restrictions specified should distinguish between activities for a charitable purpose and activities governed by *Australian Consumer Law* (ACL)

Australian Red Cross proposes that the hours for fundraising should be restricted to:

- Monday to Saturday: 9am to 8pm; and
- Sunday/Public Holidays: 9am to 5pm

Restricting calling hours which were in accordance with the default provision of the Australian Consumer Law would have a considerable financial impact on the organisation and Red Cross' ability to deliver critical community services. Telemarketing during the period of 5-8pm is the most productive calling time for charities.

For other forms of calling, charities may be subject to regulations placed on it by local government and charities conducting fundraising activities in shopping centres may be required by management to keep the same hours of operation as the centre.

Q 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?

The discussion paper notes that the unsolicited selling provisions of the ACL do not currently apply to donation of monies (including cash) to a charity (paragraph 42). Red Cross submits that this position should continue.

If a charity is seeking donations 'door-to-door', there may be local government regulation of that activity in particular areas. Australian Red Cross does not suggest that the local regulation of that kind should be affected by any provisions of the national reform of fundraising regulation.

To avoid any doubt, it would be desirable to state in any relevant legislation giving effect to fundraising reform that the uniform regulatory framework does apply to gaming activities such as raffles and the like, which are conducted for fundraising purposes of a charity

Q 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?

Australian Red Cross supports the disclosure of information that identifies the charity at the time of giving and the provision of information stating whether the collector is paid or unpaid.

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

Red Cross supports the need for identification of fundraisers and the requirement to wear identification badges with the charity's name, its contact details and the name of individual fundraiser.

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

Any materials which are provided, or available, to potential donors which have the specific and express purpose of soliciting a donation should provide:

- the charity name and its ABN,
- contact details for the charity; and
- the intended use of the donation proceeds,

as per current regulatory standards.

Regulation however needs to distinguish between advertising materials used as fundraising channels and materials used at the point of donation solicitation. Advertising channels such as SMS donation

solicitation should not have the requirement to disclose the ABN simply because of space constraints in the channel, whilst advertising materials are better able to meet this disclosure requirement.

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

Red Cross supports the suggestion that DGR status should be disclosed at 'point of donation' to the donor, but accepts that this may not be possible through all fundraising channels (such as SMS). Such disclosure should, however, be a compulsory inclusion on charity websites.

As a broad proposition, a donor who is an Australian resident taxpayer generally will be able to make a claim for a tax deduction for a donation to an entity which is a DGR. However, the issue of tax deductibility being stated with accuracy is more difficult:

- for persons who donate but are not necessarily Australian residents or taxpayers (particularly in respect of donations through a website, as the donor could be a resident of another country and any deductibility would be subject to the laws of another country); and
- possibly, the deductibility may be subject to the individual circumstances of the donor.

Consequently, any statement which may be required should be in terms which allow for the variety of circumstances of the donor.

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

Red Cross believes that information on the cost to the donor of making a donation be disclosed. This will vary by channel used for donation. For example, an SMS donation requires disclosure of the cost of the response text to the potential donor.

Q 4.7 Should charities be required to provide contact details of the ACNC and a link to the ACNC website, on their public documents?

Red Cross does not consider it necessary to have ACNC contact details and a link to their website on public documents. Adding contact details of the regulatory body (ACNC) in connection with the donation process will increase complexity and be potentially confusing to donors. Most charitable donations are given without issue and therefore the disclosure of ACNC details is generally unnecessary.

Should a concern, complaint or issue arise, the charity should have ACNC contact details available on request should they be required by donors.

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

In principle, Australian Red Cross does support adding qualitative elements around beneficiaries and outcomes delivered, in addition to standard quantitative elements relating to fundraising regulation, however recognises that there is inherent difficulty in creating a consistent and objective basis for the sector as a whole when qualitative elements are included. This would require further consultation and discussion.

Q 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?

Australian Red Cross supports higher standards and national consistency in reporting on amounts raised, the costs associated and the remittance of those funds.

The value of the 'cost of fundraising' information, both to donors and to the community at large, relies on the establishment of a standardised reporting framework that encourages consistent and accurate reporting by the sector.

We also believe that a defined, standard set of costs associated with fundraising should be determined for reporting, in order to deliver greater transparency, clarity and parity around reporting on costs of fundraising.

At present there is much diversity within the sector when it comes to defining fundraising cost across the sector, leading to misleading comparisons of charity performance. Salaries, for example, are included by some charities but not others. Some include only direct, variable costs of fundraising while others include indirect or fixed costs and costs associated with the broader organisational infrastructure e.g. IT, finance and HR cost allocations. In addition, if allocation of indirect costs is to be included in the cost of fundraising, then it would be appropriate to determine how these costs are to be allocated (under a statement of general principles with detail through Guidance Notes published e.g. by the ACNC, rather than through specific legislative requirements).

Fundraising techniques that require high start up costs but provide better returns in the longer term (such as Regular Giving) also need due consideration.

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

Australian Red Cross does not believe there should be any distinction between different channels of fundraising. On this basis, it supports the suggestion (paragraph 60) that registration as a charity with the ACNC should be a necessary condition to conduct any form of fundraising, including internet and electronic fundraising.

Q 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?

Australian Red Cross believes that fundraising materials sent electronically should publicise the charity's ABN if possible, but acknowledge as noted in Q 4.4 that this may not be possible with all channels (eg. space constraints with use of SMS).

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

Australian Red Cross supports existing technology-specific restrictions that have already been established by Commonwealth legislation in relation to data privacy and the not for profit sector. Any additional regulations relating to fundraising activities should be considered as part of a review of the legislation governing the use of those technologies.

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

Australian Red Cross believes that regulation needs to differentiate between the different types of third parties on the basis that they have different incentives and associated risk. Private participants and unpaid third parties with no financial benefit should have less administrative burden imposed.

Australian Red Cross proposes the following rules should apply:

- Paid third party fundraisers should be subject to the same rules as the charity and obliged to comply with the national fundraising regulation framework and legislation relevant to the fundraising activity.
- Private Participants should be required to have a written agreement with the charity that sets out the responsibilities of both parties.
- Unpaid third Party fundraisers who receive no financial benefit from the charity should be required to have an authority to fundraise to act on behalf of the Charitable organisation, sourced from the charity itself.
- All third party fundraisers (paid or unpaid) should disclose the minimum requirements set out in Q4.4, namely:
 - the charity name and its ABN
 - contact details for the charity
 - the intended use of the donation proceeds

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

See answer to question 7.1

Q 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?

Australian Red Cross believes that a requirement to register with ACNC should only apply to paid third party fundraisers ie. those who receive some form of financial benefit from the fundraising activity. It would be appropriate for such paid third party fundraisers to register with the ACNC, as this will provide an additional level of assurance for the charity and members of the public.

Australian Red Cross suggests that imposing this requirement on other third party fundraisers (where they are not being paid) would act as a deterrent, discouraging these groups from participating and leading to a loss of associated benefits for both the charity and beneficiaries.

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

Yes. All third party fundraisers should be required, at a minimum, to state the name and ABN of charity for which they are collecting, and the purpose for which they are collecting.

For paid third party fundraisers, in addition to stating name of charity and ABN, they should be required to provide an identity badge, letter of authority and appropriate permit to fundraise for the location where they are soliciting donation.

Q 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?

Public confidence in fundraising depends on trust that donations are reaching their intended destination, and Red Cross supports measures to improve understanding of fundraising costs.

Consequently, all third party fundraisers should be required to disclose to donors and potential donors, the charity and purpose for which they are collecting donations. In regard to the method of disclosure, regulation will need to distinguish between different types of channel - such as phone, face-to-face, mail or electronic – and provide guidelines on best practice.

Upon request, paid third party fundraisers should disclose any fees or benefits they are receiving.

Q 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 answer to Q 7.5