

Australian Broadcasting Corporation

submission to

The Treasury

Charitable fundraising regulation reform

April 2012



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Introduction

The ABC welcomes the opportunity to respond to the Discussion Paper seeking comments on a proposed framework for a new nationally consistent approach to regulation of charitable fundraising.

The ABC is proud of its contribution to charitable fundraising efforts in the community. Through its local radio network, the ABC provides a platform for large and small fundraising bodies to communicate with local communities and facilitate charitable donations. ABC Television regularly carries Community Service Announcements (CSAs) and the ABC has a comprehensive workplace giving program in place.

The ABC supports the policy principles set out in the Discussion Paper and agrees that appropriate levels of transparency and accountability are necessary to maintain the public's continued trust and participation in fundraising activities. This might be achieved through a range of mechanisms, including through a range of mechanisms, including through application of existing laws and through self-regulation. The ABC's activities, for instance, must be conducted in accordance with the *Australian Broadcasting Corporation Act 1983* and the ABC's Editorial Policies and Code of Practice, along with a range of other governance mechanisms (eg, oversight by the Auditor-General and Parliamentary committees). These existing controls should be taken into account before imposing any new regulation on the ABC.

The ABC's connection to fundraising in the community

There is a strong connection between local ABC services and the communities of which they are a part, and this is reflected in the contribution the ABC makes to charitable fundraising across its various distribution platforms.

- Across its 60 local radio services, the ABC carries dozens of CSAs each day, providing a valuable pathway for charities to reach potential donors.
- Local radio presenters often lend their name to community appeals.
- Many stations offer an open phone-line segment during which local (non-political) community and charity groups can broadcast details of upcoming events, such as fetes and performances.
- In addition to the ABC's national events guide, *The Big Diary*,¹ local radio websites also offer event diaries that local charities and non-profit organisations can use to publicise fundraising events or activities.
- Local radio presenters will also regularly interview representatives from charitable organisations or provide on-air mentions of fundraising activities. Local radio services have built associations with various community, state or national fund-raising events through outside broadcasts, CSAs and related editorial content.²

The national radio networks (Radio National, triple j, Classic FM and NewsRadio) duplicate this activity. For example, *Breakfast* presenters Fran Kelly (RN) and Tom Ballard (triple j) have also recently participated in charitable fund-raising activities and discussed them on-air. Some of the national networks also carry interviews publicising appeals.

In recent years, all networks have broadcast promotions and editorial content in support of appeals for flood and fire relief (Australia), flood victims in Pakistan and famine in the Horn of Africa.

ABC Television also carries CSAs on its services. As with other ABC platforms, this is subject to a requirement that the content accords with the *Australian Broadcasting Corporation Act 1983* and the Corporation's Editorial Policies. The Editorial Policies are approved by the ABC Board and expressly acknowledge the role the ABC plays in broadcasting and publishing CSAs that support charities and other activities in the public interest, consistent with the Corporation's public service remit under its Charter. The Editorial Policies also make clear that the ABC cannot derive a financial or other benefit from broadcasting or publishing CSAs, that CSAs can only be broadcast or published as a public service and that the ABC must clearly distinguish CSAs submitted to the ABC from content it produces, commissions or acquires.

As a corporation, consistent with the ABC's commitment to Corporate Social Responsibility, the ABC facilitates fundraising contributions from its staff through its Workplace Giving programs, which allow employees to make ongoing fortnightly donations to charities of their choice. Last year, this scheme raised over \$100,000 for various charities. The ABC also facilitates employee contributions to charity appeals, such as those set up for the Pakistan floods and Victorian bushfires, and to one-off workplace appeals such as those aiming to provide assistance to colleagues or their families suffering ill-health or tragedy.

¹ <http://www.abc.net.au/thebigdiary/>

² For example see: <http://www.abc.net.au/local/stories/2012/03/23/3461982.htm?site=sydney>

The need for regulation

The ABC supports the development of a framework for a nationally consistent approach to the regulation of charitable fundraising. Proposals to improve transparency in the sector and provide the public with more readily accessible information are commendable and the move to harmonise state and territory law is a logical next step. The ABC supports the favouring of improved transparency and public information over more prescriptive regulation of fundraising activities.

Whilst a level of regulation is desirable to ensure public confidence and trust in fundraising, there is also a need to ensure regulation does not unduly restrict or burden fundraising activities. It is important to ensure regulation is proportionate to the policy 'problem', which is identified in the Discussion Paper as the need to address information asymmetry (which in turn creates an imbalance of power in transactions).

The establishment of the Australian Charities and Not-for-profits Commission (ACNC) and associated information portal have the potential to improve the position of potential donors in making informed choices about donation.

The impact of the proposals on the ABC

As outlined above, the ABC plays a unique and valuable role in charitable fundraising, utilising its strong connection to communities and ability to reach a wide range of audiences for a public benefit. The Corporation is concerned to ensure that charitable fundraising regulation reform does not restrict this public benefit.

The ABC notes the proposed exemptions from fundraising regulation listed in the Discussion Paper and supports the exemptions for workplace appeals.

There is a further class of ABC fundraising-related activity which the Corporation submits should also be exempt from further regulation: activities such as those outlined above, which include partnering with charities to promote appeals, publicising community fundraising events, providing editorial content, broadcasting CSAs, community diaries and open phone-lines.

As regards these kinds of activities, the ABC submits that it should be exempt from further regulation as a third-party that does not earn any financial benefit from the activities. Whilst the ABC disseminates messages on behalf of charitable organisations, it can be distinguished from the kinds of organisations described in the Discussion Paper who solicit, receive and process donations, sometimes for commercial gain.

In these kinds of circumstances, the proposed regulatory obligations, such as the extension of Australian Consumer Law, registration with the ACNC, information disclosure requirements and regulation of advertising messages, should attach to the relevant charitable or fundraising organisation. The obligations should not be imposed on third-party entities, such as the ABC, which facilitate the communication of messages and the collection of donations on behalf of such organisations.

The policy aims outlined in the Discussion Paper could be achieved through a self-regulatory approach by organisations such as the ABC. The Corporation has strong Editorial

Policies and is currently updating its internal guidance regarding the promotion of charitable causes. This, combined with the imposition of accountability and transparency measures on charitable organisations, should ensure the appropriate level of public trust and confidence is maintained.

For example, if advertising is to be regulated, as canvassed in the Discussion Paper, and this is taken to incorporate CSAs, responsibility for meeting regulatory requirements should attach primarily to the charitable organisation in question. This would be consistent with the approach taken in other areas of law which exclude liability for publishers as regards messages they distribute (such as the publisher's defence in Australian Consumer Law). Consideration might be given to requiring advertisers to publish details about the relevant charity, similar to the requirement under electoral laws for political advertisements to include the name and address of the political party or other third party authorising the material.

Excluding the ABC from regulatory requirements and confining their operation to charitable organisations would not result in any less public accountability or consumer protection, but would ensure the ABC's public benefit contributions are not unduly restricted. With transparency and accountability responsibilities falling on charities, and thereby addressing the public policy rationale for regulation, there is no policy rationale for placing compliance obligations on the ABC.