



## **Australian Catholic Bishops Conference**

### **Response to The Discussion Paper and draft Regulation Impact Statement “Charitable fundraising regulation reform”**

**April 2012**

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## **INTRODUCTION**

The Catholic Church in Australia and its agencies (the Church) contribute in a wide variety of ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people experience the fullness of life. It is concerned with all that impacts on human wellbeing. It comprises many thousands of different entities which have different purposes, modes of governance, and are subject to varying types and levels of government regulation.

The Australian Catholic Bishops Conference (ACBC) is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance. In Australia, parishes of the Catholic Church are unincorporated and where church entities are incorporated, some are incorporated as companies limited by guarantee (eg particularly congregational schools) but many are registered as incorporated associations locally in states and territories, rather than nationally. For most unincorporated church entities, natural persons often enter into contracts or transactions or, where a legal entity is necessary, there is a trust corporation that enters into contracts or transactions on their behalf in matters relating to property, finance and investment. This has led to cost-efficient governance of these entities supported by fit-for-purpose financial reporting.

### **Complexity of Catholic Church Structure**

There are currently 3,663 entities in the Catholic Church Goods and Services Tax (GST) religious group. This does not reflect all the entities that comprise the Church as in many cases all the schools in a diocese were endorsed as one entity and in other cases entities were endorsed as branches. The Catholic Church comprises parishes, organisations within parishes, dioceses, religious orders, provinces, the church nationally and local entities that are part of the church internationally.

### **Parishioners**

Parishioners provide non tax-deductible contributions (e.g. deposited voluntarily to collections before, during and after church services) and tax-deductible contributions (e.g. donations to registered school building funds). Donors, unlike shareholders in a public company or depositors or investors with a financial institution, neither receive nor expect a *private* financial return on their contributions to Church activities which include many and varied works by big and small, metropolitan and provincial and remote rural parishes and parish entities. Therefore, the concept of risk may take on a completely different character for a donor than for an investor.

Parishioners identify with the community benefit and social capital generated by their local parish and church activities. They are able to observe directly how their contribution is applied locally through their direct involvement in worship and other parish activities. This relationship provides adequate opportunity for accountability and transparency and requires different treatment to the duties to a donor generally. And again the status of donor is entirely different to say a shareholder in a public company, or a depositor in a

financial institution who desires not only to know how revenues and profits are allocated, but also the prospect of a return on their financial investment.

The ACBC does not consider that there is a compelling case for harmonised Commonwealth legislation without State and Territory agreement. In this context, the ACBC endorses the suggestion in paragraph 18 that “donations to religious organisations from their own members ... might be exempt from fundraising regulation”. Indeed, as donations constitute the primary source of funds for Catholic parishes, parishes and religious organisations should be exempt generally from fundraising regulation as is the case in New South Wales.

There are precedents in efficient State-based regulation. In Victoria, for example, religious bodies that have authority to marry people are exempt from regulation as fundraisers under the Victorian *Fundraising Act 1998*. Should a religious body wish to conduct a raffle, separate registration is required. In New South Wales, Catholic Church entities are exempt from the *Charitable Fundraising Act 1991* (NSW). This means that parishes and other Church bodies do not need to seek permits to conduct raffles or lotteries. In the Catholic Archdiocese of Sydney alone, Catholic agencies, parishes and schools conduct, at a minimum, in the vicinity of 1,000 raffles per year. In relation to the conduct of raffles, under NSW law no permit is required for any organisation to conduct a raffle where the prize money offered is \$25,000 or less. If prize money is over \$25,000 then it is not classified as a raffle and a permit is required. Other states have different raffle and lottery regulations. If NSW charities registered with the Australian Charities and Not-for-Profits Commission (ACNC) are required to obtain a permit then they would be at a disadvantage which is in stark contrast to Not-for-Profits not registered with the ACNC and not encumbered by the same changes to the legislation.

### **Importance of fundraising in the context of the Catholic Church**

Archdioceses, diocese, parishes, schools and Church agencies are reliant upon many fundraising initiatives and the generosity of those that can give in order to provide the pastoral and community services for those in need. Funds are not raised for profit, but rather to invest in the many programs and initiatives the Church provides the community, whether it be of a pastoral or charitable nature. Further to this, transparency and disclosure of where the funds raised are being used is a common and necessary practice within the Church – noted for the cause at the time and recorded in annual reports. It is important that the Church is able to continue to raise funds in the manner in which it currently does. Increased red tape or overly burdensome and duplicative reporting mechanisms will only add to the administrative cost of fundraising, potentially diverting funds away from people in need. While parishes may receive tax concessions, raise funds and in turn provide finance or resources to welfare, education and health activities operating within the parish, the parish entity itself exists primarily to support the parish community. Financial contributions by parishioners go to financing the provision of parish worship and other services, and the maintenance of parish resources.

### **Further consultation**

The ACBC appreciates the opportunity of commenting on this discussion paper and will make further more detailed comments when an exposure draft of proposed regulation is published.

The ACBC is available to elaborate upon any of the general and specific comments that follow in this submission.

This submission should also be read in conjunction with the submissions the ACBC made with respect to:

- the Treasury Consultation Paper *A Definition of a Charity*;
- the Exposure Draft of the *Australian Charities and Not-for-profits Commission Bill 2012* (ACNC Bill);
- the Treasury Consultation Paper *Review of not-for-profit Governance Arrangements*; and
- the Discussion Paper: *Australian Charities and Not-for-profits Commission: Implementation Design*.

## SUMMARY OF THE ACBC'S KEY POINTS

There are a number of different approaches to the reform of fundraising legislation that are contingent on the fundamental decision of State governments to cooperate.

The main issue with the regulation of charitable fundraising in Australia at the moment is the multiplicity of different regimes requiring different compliance and the general duplication of activity across the States.

It is evident that a prescriptive regime for charitable fundraising such as exists in the States at the present time is generally and substantially unenforced and in some instances, due to the nature of the regulation, unenforceable.

The ACBC welcomes a thorough study of charitable fundraising regulation and an approach that will serve good social policy while at the same time minimising the burden on the compliance cost for charities.

The ACBC acknowledges the vision of the *National Compact: Working Together* (the compact) in reducing red tape and streamlining reporting.

It is the view of the ACBC that the fundamental purpose of any regulation of charitable fundraising is to ensure that the intention of donors is respected and funds are used for the purpose that has been communicated. The ACBC acknowledges as a secondary and less significant purpose the regulation of means of fundraising that do not create a nuisance for the public.

Key observations and concerns of the ACBC:

- **compliance and cost burden** - without harmonisation between Commonwealth agencies and between the Commonwealth, State and Territory governments, the introduction of Commonwealth fundraising legislation applicable to all charities, coupled with extending the scope of the ACNC to include oversight of fundraising, could add significantly to the compliance and cost burden on charities and ultimately not-for-profit (NFP) organisations;
- **the general law is more than adequate** to deal with matters relating to the proper appropriation of funds and there does not seem to be any need for specific legislation relating to charitable fundraising. Therefore, the ACNC's role on fundraising should be limited to publishing best practice guidelines;
- **the case has yet to be made that Commonwealth oversight would be better** than existing oversight of fundraising by State and Territory authorities;
- the **Australian Taxation Office already plays an important role** by investigating suspected cases of improper management of taxation liabilities and obligations by charities and NFPs;
- the **ACNC's ability to regulate fundraising before its regulatory coverage extends to all NFPs is debatable**. Serious consideration should be given to withholding powers

for the ACNC to regulate fundraising until the ACNC has full regulatory coverage of the charities and NFP sector.

## Recommendations

- **Religious organisations should be exempt** - if and when the ACNC takes on regulatory oversight of fundraising, and in any consolidated Commonwealth legislation, religious organisations should be exempt from this oversight as occurs in some State-based regulatory regimes currently. Where organisations have a clear public identity then the community can make its own considered decision as to whether it wishes to place trust in those organisations and respond to a request for funding;
- The ACBC notes favourably the possible exemption for parish donations from ACNC oversight. As set out above, however, the ACBC recommends that **all religious organisations, including schools and Church agencies and organisations, be exempted from fundraising regulation**. There is precedent for taking complex governance arrangements within the Church into account in the creation of the GST religious group and ACBC considers that in the case of fundraising religious organisations should be dealt with specifically by being exempted from regulation.
- That the **commencement of the ACNC is delayed by at least 12 months** given the lack of harmonisation of legislation between States and Territories and Commonwealth law, as well as due to a lack of evidence of meaningful discussions between the Commonwealth, State and Territory Governments.

## GENERAL COMMENTS

### Harmonisation and Red Tape Burden

The ACBC is concerned that there has not yet been any commitment by State and Territory governments to co-operate with the process to achieve harmonisation of the myriad regulations that currently exist and impact on the NFP sector. This applies to fundraising as it does to harmonisation of registration and reporting requirements.

If the ACNC Bill is enacted as currently drafted, the Catholic Church will have some of its entities regulated under State and Territory law, some under the Commonwealth law and most with a mix of multiple jurisdictions. We would not wish to see this duplication magnified by overlapping reporting requirements in relation to fundraising.

Without a commitment to harmonisation between Commonwealth, State and Territory Governments, there is a substantial risk that the introduction of Commonwealth fundraising legislation will only add to the already heavy, cumbersome and complex regulatory burden on charities and NFP entities. No fundraising legislation should be introduced until there is detail on any commitment by State and Territory governments to the vision outlined in the discussion Paper.

In this context, the ACBC notes the finding of the Council of Australian Government's (COAG) Reform Council:

- **Not-for-profit sector (fundraising):** *This reform stream has not progressed. The Ministerial Council on Consumer Affairs has not been able to release a consultation RIS in line with the implementation plan. These delays may impact on the ability of COAG to agree a decision RIS by December 2011. (COAG Reform Council, Seamless National Economy: Report on Performance—Overview, 23 December 2011).*

The ACBC also notes the earlier statement in June 2011 by the then named Ministerial Council on Consumer Affairs (now the Legislative & Governance Forum on Consumer Affairs):

**Fundraising regulation reform**

- *Ministers noted the Australian Government’s recent announcement that it would work with the States and Territories through COAG on consistent approaches to the regulation of charities and not-for-profit bodies. Ministers further noted the Australian Government’s commitment to commence negotiations with the States and Territories on consistent regulation and a new national regulator for the charities and not-for-profit sector.*
- *Given the Ministerial Council’s responsibility for progressing fundraising reform, the Ministerial Council tasked the SCOCA national fundraising project team with developing consistent approaches to fundraising regulation. An issues paper will be published in the second half of the year.*

ACBC understands that the COAG Issues Paper is yet to be released. It is unclear how the Treasury’s Discussion Paper under review builds on or crosses over with the COAG process.

The ACBC submits that if COAG has been unable to progress agreement and actions between the Commonwealth, State and Territory Governments over the past three years, the Commonwealth Government may be underestimating the task of simplifying regulatory oversight of fundraising under the auspices of the ACNC. A satisfactory outcome may be some way off if many of the relatively new criteria for national regulation of fundraising set out in the discussion paper are adopted (e.g. the annual fundraising \$50,000 threshold for inclusion of charities and not-for-profits under the oversight of the ACNC, although as set out elsewhere, the ACBC considers this threshold to be too low).

While the comments presented later go to specific issues, a general proposition is that oversight of fundraising by the ACNC might be reviewed if and when the ACNC’s oversight includes all NFP’s and the COAG process has had sufficient time to come to some conclusions on the extent of agreement between Commonwealth, State and Territory Governments.

**Exempting religious organisations from Commonwealth fundraising regulation**

In previous submissions, the ACBC has argued that the Commonwealth Government should recognise related governance of entities such as parishes within complex religious organisations being excluded from direct regulatory oversight by the ACNC. The arguments equally apply to fundraising.

The eligibility criteria as set out in the NSW *Charitable Fundraising Act 1991* would be a good model for such an exclusion. An alternative would be to link the exclusion to participation in a GST Religious Group. As set out above, there are 3,663 entities in the Catholic Church GST Religious Group approved under section 49-5 of the *A New Tax System (Goods and Services Tax) Act 1999*. The ACNC should have the power to allow, at the discretion of entities, grouping for the purposes of fundraising legislation.

There are certain organisations whose size and complexity are such that they can legitimately self-regulate. This was the view taken by the New South Wales government following a very comprehensive review of its charitable fundraising legislation. It came to a sound policy decision that religious organisations, carefully defined in connection with their acceptance under the *Marriage Act 1961* (Cth) and organisations associated with them, could stand outside the regulatory model in NSW (see section 7 of the *Charitable Fundraising Act 1991* NSW). The ACBC recommends employing such a model for differentiating between organisations to any federal harmonization or federal approach to charitable fundraising.

### **Date of ACNC Commencement**

The Commonwealth should not rush the timing of any regulatory oversight of fundraising.

The ACBC welcomed the announcement by the Commonwealth Government relating to the postponement of the proposed start date for the ACNC from 1 July 2012 to 1 October 2012. However, the ACBC is still of the view that due to a lack of evidence of meaningful discussions between the Commonwealth, State and Territory Governments, a delay of one year would have been preferable. This would enable such discussions to be progressed and the charitable sector to be assured that there is a true commitment to national regulation and harmonisation of NFP regulation.

While there may be some urgency around establishment of the ACNC, the ACBC fears that premature establishment will not be a productive use of resources. Demonstrated progress is required on harmonisation and a detailed understanding by all parties of the savings in the burden of regulation that will result from the ACNC's establishment. This particularly applies to fundraising, where a commitment at COAG in relation to harmonisations has been difficult to achieve in recent years.

In addition, it is difficult to see how the ACNC can sensibly oversee fundraising activity across charities and other NFPs without registration of the latter. . This potential area of regulatory oversight should only be considered when and if the ACNC's oversight extends beyond charities to include all NFPs.



## **DISCUSSION QUESTIONS (under headings from Discussion Paper)**

### **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?**

#### *ACBC COMMENT:*

The benefits of national regulation of fundraising beyond that available at State and Territory legislation have not been identified or quantified. In particular, there has been no recognition that whatever net benefits may exist for nationally based charities dealing with a variety of regulatory regimes, smaller charities operating separately in each State or Territory will more than likely incur a net increase in regulatory and financial burden of compliance.

### **Defining Fundraising activities 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?**

#### *ACBC COMMENT:*

The ACBC welcomes the suggestion in this section of the Discussion Paper that donations to religious organisations from their own members should be exempt from ACNC oversight. However, the ACBC recommends that the Commonwealth go further and if Commonwealth legislation is enacted, it include a blanket exemption for religious organisations, including parishes, from ACNC oversight. The arguments supporting such an exemption are set out in the General Comments at the beginning of this submission.

In relation to the definition of donations, some thought should be given to extending it to include monies collected (other than official raffles) through community activities such as school fetes, sports nights, presentation dinners, etc. Furthermore, such funds should be excluded from calculation of the annual fundraising threshold above which charities will come within the ACNC's regulatory oversight (a figure of \$50,000 being mentioned in the discussion paper which the ACBC considers to be too low).

All archdiocese, dioceses, parishes, schools and agencies should be exempt from ACNC oversight in respect of fundraising as is the current situation under New South Wales law. As fundraising activities are subject to strict Australian Tax Office compliance, ACBC does not see a case for ACNC regulation of Church fundraising.

Fundraising activities for the benefit of charitable and pastoral works are very broad and include direct donations, collections, collection boxes, bequests, funds raised from events (dinners, fetes, and competitions), the sale of merchandise and raffles. There would be difficulties in managing which part of our fundraising activities fall under ACNC regulations and which parts do not.

### **Implementing a National Approach to Fundraising Regulation**

**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?**

#### **ACBC COMMENT:**

The ACBC sees merit in considering the following propositions:

- a \$50,000 annual fundraising threshold on annual fundraising for small charities is too low. Many parishes and schools need to raise far more than this. Moreover, calculation of the threshold will be problematic and confusing if charities are exempt from State-based regulation but need to account for funds collected in the calculation of the Commonwealth's threshold. Fundraising exempt under State-based regulation should be exempt from calculation of any Commonwealth threshold; (Qn 2.6)
- large nationally-based charities that see a benefit from ACNC registration and oversight should be free to opt in voluntarily; (Qn 2.7)
- the first strategic priority should be to obtain nationally agreed positions on all aspects of Commonwealth, State and Territory oversight of fundraising, before encouraging individual jurisdictions to independently review their current arrangements; (Qn 2.8); and
- the transition period should be a reasonable amount of time *after* the Commonwealth reaches agreement with the States and Territories on regulatory oversight of fundraising. Any involvement of charities prior to such agreement should be voluntary. (Qn 2.9)
- Where fundraising activities are exempt under current State legislation, they should also be exempt from Commonwealth fundraising regulations.

### **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?**

*ACBC COMMENT:*

The ACBC is of the view that charities should continue to have all the rights to raise funds under State and Territory laws as they have now.

The ACNC should only have an automatic right to stop charities from raising funds if there are the necessary referrals in relevant State and Territory legislation.

Clearly, it is not desirable that fundraising (or other) activities are continued while any charity is deemed to be operating illegally by an appropriate government authority. However, until State and Territory agreement is obtained and relevant legislation changed, the ACNC's role will be restricted to a "name and shame" approach which relevant State and Territory authorities may choose to consider in determining eligibility for fundraising.

Without such co-operation from State authorities, there is a danger that that the ACNC may become over-zealous in applying its powers to prohibit fundraising.

**Application of consumer protection laws to charitable fundraising**

- 3.1 Should Australian Consumer Law (ACL) apply to fundraising activities of charities?**

**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?**

**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?**

*ACBC COMMENT:*

The ACBC considers it important that those who solicit funds from the public are properly identified and the citation of an ABN is appropriate together with a clear statement of the organisation's name.

The issues are worth examining in detail in a separate discussion paper, perhaps under the ACNC's auspices. Many consumer and community groups, who might miss this Consultation Paper but have a view, might be better engaged in such a process.

That said, Catholic parishes and charities are very careful to keep parishioners informed on how donations are utilised, so as to keep any asymmetries of information to a minimum. It is a fundamental tenet of the Church's Code of Canon Law that the intention of donors is respected.

The ACBC does not agree that Australian Consumer Law (ACL) be applicable to fundraising activities. ACL applies to consumer transactions and applies to trade and commerce which is not applicable to charitable fundraising. Laws are currently in place that cover fraud and criminal conduct and any issue of concern can be addressed at general law or under harmonised fundraising legislation.

Certain types of fundraising activities could be regulated such as door-to-door solicitation and telemarketing – not usually undertaken by Churches. By its nature the Church operates on Sundays including evenings and unilateral regulations banning fundraising on a particular day or time is inconsistent with the nature and purpose of the Church.

Unsolicited selling provisions of the ACL cannot and should not be applied to fundraising activities. All charitable organisations have the right to ask people for support. For example, supporters of the charitable and pastoral works of a number of entities within the Church already have the right to request not to be contacted with further fundraising material including fundraising mailings and newsletters. As part of compliance with privacy legislation, opt-out mechanisms such as tick boxes on donation forms or telephone numbers to call, are included in mailings and on appeal material.

#### **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?**

*ACBC COMMENT:*

Donors should have access to sufficient information to enable them to make a prudential judgment in responding to a solicitation of funds. The way in which a particular organisation communicates the purpose of the solicitation and such other information concerning its legal form, governance, structure and modes of accountability, ought to be left to each organisation.

The tenor of some questions here (e.g. 4.3 and 4.4) is at odds with the emphasis on principles-based regulation elsewhere in the Discussion Paper. Many of the ideas inherent in these questions should be encouraged as good fundraising practice rather than be the substance of Commonwealth direction subject to harsh penalties for non-compliance.

Specifically:

- 4.1 The ACBC does not see any problem in requiring charities to state their ABN number on donation forms, brochures and appeal envelopes. However a transition period of 3 to 5 years should be implemented to allow for current stocks of marketing materials to be depleted and replaced so as not to add a financial burden to organisations.
- 4.2 Donors should have the right to know if face-to-face charity collectors are paid workers and they have the right to know the full name of the charity asking for money.
- 4.3 Persons engaged in fundraising activities should be identifiable by name badges at all times, with responsibility falling to the organisation conducting the fundraising to ensure that due diligence, including any relevant criminal checks, has been conducted.
- 4.4 In relation to unattended collections points, parishes do have collection boxes that are identified only as 'donations', 'poor boxes' 'Catholic Weekly papers' etc which have followed Church practices for centuries. People donating by this method are aware of the recipients of their donations and there is no need to interfere with this practice.
- In relation to general advertising or print material, dioceses already clearly identify the details of the recipient organisation.
- 4.5 Charities should be required to disclose if donations are tax deductible or not.
- 4.6 No other disclosure requirements suggested.
- 4.7 Charities should not be required to provide ACNC contact details or web links in their material, but clearly many charities will voluntarily provide such information to support donor confidence in their fundraising process.

## **Information giving 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?**

### *ACBC COMMENT:*

On face value, many of the suggestions mentioned in this section will dramatically increase red tape for most charities.

While some recorded information in a form that the ACNC can audit may be worthwhile, the ACNC and the Australian Tax Office should have sufficient powers to investigate charities suspected of illegal activity relating to fundraising under a range of existing laws, without burdening the majority of charities with new-onerous record-keeping obligations.

In respect of information on outcomes, ACNC could sensibly issue principles-based guidance for charities to adopt best practice. Education of donors on critical fundraising needs, whether they are infrastructure, operating or administration costs, is to be encouraged. Such principles might advocate that:

- charities should make clear statements of the purpose to which the funds are to be put. This may be for the general purposes of an organisation or, within an organisation's activities, it may be appropriate that it identify a particular purpose such as a disaster appeal; and
- where funds are solicited for a particular purpose then they should be appropriated substantially to that purpose less appropriate administrative costs.

However, an educative approach should be taken in the early years of operation of the ACNC rather than powers in the form of mandated direction.

## **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?**

*ACBC COMMENT:*

There are complex issues relating to fundraising with electronic media, not least of which is the impact on the variation in the ability between larger and smaller charities to connect with potential donors, and for charities to align with commercial sites to gain donor advantage.

The issue is important but is best suited to an independent investigation by the ACNC once it has been established rather than determined in the legislative framework establishing the regulatory framework for fundraising.

**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?**

*ACBC COMMENT:*

Organisations that solicit funds from the public should be required to account for funds received in some public fashion whether by way of public report or web based annual report.

However, the issue of third party fundraising is developing rapidly, and it would be appropriate for the ACNC to investigate and suggest best practice principles for charities to follow.

The ACBC accepts that in the complex world of modern fundraising, particularly for certain activities, it is necessary to expend funds on consultants and third parties to assist in that process. Such practices should be permissible and reflected in an organisation's audited accounts.