



Australian Conservation Foundation

Submission on Discussion Paper

Charitable fundraising regulation reform

The Treasury (February 2012)

Australian Government

ACF Contact Details

Name: Ms Sari Baird, General Counsel

Email: s.baird@acfonline.org.au

Phone: 03 9345 1174

Confidentiality: This submission is a public document

5 April 2012

Australian Conservation Foundation

Discussion Paper

Charitable fundraising regulation reform

1. Background

ACF welcomes the opportunity to make this submission.

ACF is a national, community-based environmental organisation that has been a strong voice for the environment for over 40 years, promoting solutions through research, consultation, education and partnerships. We work with the community, business and government to protect, restore and sustain our environment.

ACF is a medium sized NFP and has charitable status. It was established under what is now the *Associations Incorporation Act 1991 (A.C.T)* and holds an ABN (for GST purposes) under the *Corporations Act 2001 (Cth)*.

Through its own activities and involvement in sectoral representative bodies including the National Roundtable of Nonprofit Organisations (**NRNO**) ACF has a longstanding interest in the policy setting affecting the Not-for-Profit (**NFP**) Sector and has been a regular contributor to the debate on these issues.

ACF welcomes the opportunity to have input into the consultation process and it is hoped that the results will contribute to confidence and efficiency in charitable fundraising regulation.

ACF has not responded to every question.

Consultation question:

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.

A significant burden is imposed by the need to stay abreast of, administer and report under a variety of Commonwealth, State and Territory electoral laws that are unnecessarily complex, duplicative or inconsistent.

2.2.1 Assessment and consequences of charitable status

The application of fundraising legislation in each State or Territory will turn on whether or not an entity is considered to be 'charitable'. Currently there is no guarantee that recognition in one jurisdiction leads to recognition in another, for example whereas ACF is recognised as a charity in Victoria, it is not in South Australia.

2.2.2 Fundraising laws and NFP disclosure

The inconsistency between State and Territory charitable fundraising laws poses challenges for NFPs wishing to fundraise across jurisdictions and to utilise modern fundraising techniques, including online tools.

2.2 (cont'd)

It is impossible to operate a single streamlined national fundraising campaign, a point that was made to the Productivity Commission by The Fundraising Institute Australia in 2009.

Each time a program for fundraising is considered, and before any funds are raised, it is necessary for an ACF staff member to review and evaluate the differing tests in each State and Territory: this creates substantial administrative and management work and uncertainty.

This should be simplified through a systematic review of legislation at Commonwealth, State and Territory level to implement a coherent approach and to remove inconsistencies and duplications. ACF recommends that this be progressed as a fundamental outcome of the not for profit reform processes currently underway.

The diversity in laws also impacts on practical issues like:

- how ACF's fundraising campaign will be articulated in a fundraising campaign's materials, or
- whether or not a single script can meet the requirements of one State's requirement and be expected to meet another's script content requirements, or
- whether or not the required information for 'sign up' forms for donors will satisfy each State regulator - these must be prepared and printed separately for different States, leading to increased expenses, loss of economy of scale and waste.

In addition to adding to administrative expense and absorbing time and resources, the inconsistency and complexity leads to confusion: amplifying the likelihood of inadvertent non-compliance especially, where there are staff sourced from other sectors in the economy.

In 2009 ACF reported to the Productivity Commission that the key areas of inconsistency across the eight State and Territory jurisdictions that pose the greatest practical difficulties included different:

- tests of charitable purpose and therefore coverage under the relevant State/Territory fundraising regime;
- registration and authorisation renewal requirements, for example some jurisdictions require annual renewals while others adopt longer time periods;
- fundraising authorisation terms and conditions that govern the type and methods of fundraising activities;
- requirements applicable to the engagement by NFPs of commercial fundraising service providers, including inconsistent regimes for regulatory approval of service provider relationships and fee disclosure requirements; and
- fundraising and other periodic reporting requirements.

Meaningful reform requires at least national regulatory harmonisation but ideally a single National Fundraising Act (based upon a referral of powers from states and territories to the Commonwealth). In addition to substantially reducing administrative burdens, this approach would reflect the reality that fundraising methods, such as the use of the Internet, are cross-jurisdictional and can pose difficult jurisdictional questions.¹

¹ See Senate Standing Committee on Economics: *Disclosure regimes for charities and not-for-profit organisations* (December 2008). Report (**STEC Report**) available at http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/index.htm at p.98

2.2.3 Commonwealth and State/Territory Electoral Laws – Disclosure of Gifts

Many NFPs contribute to sound public policy in the furtherance of their charitable purposes. ACF comments on issues that arise in an election context, and throughout the political cycle it may comment on or refer to the policies of governments, political parties or candidates where they relate to environment matters.

In some cases, the expression of views on what are deemed to be “political” or “electoral” matters may trigger legal obligations under the Commonwealth *Electoral Act 1918* and equivalent separate legislation in each State and Territory. These obligations are triggered because the Act extends beyond disclosure and reporting requirements applicable to political parties and candidates to cover the activities of broad sections of civil society in Australia.

The relevance of these laws arises because they require reporting or disclosure of gifts exceeding a prescribed threshold (that varies between jurisdictions) that are used to enable such “political expenditure”.

Although efforts have been made to harmonise laws nationally, as is the case with laws and regulations on a range of other issues, these are another layer of eight different State, Territory and Commonwealth laws. Furthermore, these laws are complex and in several respects, uncertain and can be subject to frequent change.²

ACF recommends a cost/benefit review of the coverage of the NFP sector’s non-partisan charitable advocacy activities under Commonwealth, State and Territory electoral laws.

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?

ACF has requested the opportunity for a meeting to discuss the views presented in the discussion paper and would be glad to speak in more detail on this question.

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

ACF agrees that, in the case of the examples provided, the existing regulation that applies, or circumstances arising for those activities, is adequately assures the information to the donor and a level of information in subsequent reporting.

2.5 Are there additional fundraising activities that should be exempt from fundraising regulation?

This requires clarification so that personal initiatives in support of fundraising for an existing and registered charity (for example, personal correspondences or social events organised by a charity’s supporters) or that involve the membership or supporter base of that particular charity, will be exempt.

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.

ACF refers to the comments on question 2.2 above and poses the question whether or not smaller charities who are very active in policy advocacy have access to the resources to research or stay abreast of the legislation and its requirements.

² *Commonwealth Electoral Act 1918 (as amended)*

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

ACF does not object to accountability in the sector and considers that objective tests to ensure strong standards could encourage improved giving. However, there are costs associated with meeting the compliance and training expectations under the ACL that would add considerably to the administration and management costs associated with meeting those expectations. Moreover there are serious financial penalties and infringement consequences that are more appropriate for the ACL's current application to the commercial sector and which may discourage volunteer participation in the not for profit sector. A more detailed explanation of how the ACL provisions might apply to a charity should be provided to be able for ACF to be able to add any more meaningful comment.

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

ACF recognises the importance of balance and ensuring that private time is not unnecessarily intruded upon. However, people who are in employment or business tend to have the greater potential to contribute by donation: they are not usually at home during business hours, so it is necessary that fundraising activities directed towards them need to be able to be pursued for some period after working hours.

In some of ACF's staff members' experience calling hours up to 7 pm or 8 pm have proved acceptable.

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?

In ACF's case most unsolicited approaches are to seek regular donors who donate cash (rather than selling merchandise). These donors do not sign a standard contract for value or exchange in 'trade or commerce': the donor makes a 'pledge' to give in the future which is capable of termination if the donor later changes their mind. In these circumstances, ACF considers that it is not necessary to impose some of the mechanisms in the ACL that can effectively cause cash flow challenges and which may affect the efficiency of third party service provider arrangements.

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

From the perspective of donors and grant makers, a number of commentators have identified the limited utility of existing laws on the disclosure of fundraising costs by NFPs.³ ACF is supportive of measures that would improve the usefulness of reporting by NFPs to their donors and other stakeholders.

ACF does report its outcomes to donors in a number of ways, this includes its Annual Report (available publicly on the website) in regular letters and emails to members and supporters, through use of video interviews and footage (You Tube and ACF website) and in its Habitat magazine articles (available to members in hard copy and to the public free on the ACF website). ACF also completes

³ See for example The Allen Consulting Group (2006) *Improving Not-For-Profit Law and Regulation: Options Paper*; Chapter 4; available at <http://www.allenconsult.com.au/publications/view.php?id=314>

5.1 (cont'd)

acquittal reports that include qualitative reports, to grant making bodies that fund particular programs and it also conducts donor events across the State and Territories. ACF also provides commentary about issues affecting outcomes for its beneficiary (the environment) through mainstream broadcast, radio and newsprint media and other print publications.

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?

ACF reported in 2009 (to the Productivity Commission) that any new standards must be framed in a way that acknowledges:

- the diversity of fundraising sources and methods across the sector. For example, an organisation receiving a significant portion of its funds from Governments and other large grant makers may have lower fundraising costs than an organisation highly dependent upon expensive methods such as face to face recruitment and telemarketing;
- that fundraising strategies may be based upon timing and return on investment assumptions that do align with applicable reporting cycles. For example substantial costs may be invested “up-front” in a fundraising campaign expected to yield results over many years. Costs associated with establishing the campaign may appear high in early reporting years;
- the diversity in organisational outcomes or “outputs” across the sector. For example, not all NFPs are engaged in activities commonly referred to as “service delivery” (eg. treating the ill or providing housing or other human services). While in some cases these types of outcome may be partly amenable to some form of ratio based reporting, for many organisations meaningfully assessing “social returns on investment” can be a more nuanced exercise more suited to narrative based reporting on achievements against mission and purpose than financial ratios;⁴ and
- that as is the case in any other context, undertaking quality work in the NFP sector requires adequate “administrative” and other support.

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

The establishment of uniform accounting standards may assist with questions such as how to account for various costs, it may not adequately address some or all of the issues outlined above. In short, a “one size fits all approach” is unlikely to yield improvements in the quality of material available to all donors and other stakeholders.

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

ACF recognises the challenges associated with ‘authentication’ and verification, however, a more detailed description of the proposals would be needed before ACF can comment reasonably or definitively on this question.

There is a great role for technology in fundraising as it has capacity to greatly improve access by Australians to a giving culture, thereby improving Australia’s poor world ranking for involvement in

⁴ See evidence given by Professor Myles McGregor-Lowndes to the STEC Review. STEC Report p.109

6.1 (cont'd)

philanthropy; it would be of some concern if blunt measures had the unintended effect of inhibiting the potential for that growth in the use of technology.

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

ACF has already commented on the challenges associated with the different State and Territory based regulation on fundraising (scripts for example) in its response to the Section 2 of the Discussion Paper questions above. Disclosures required by different States in relation to third party face to face fundraisers and telemarketers can be varied, complex and onerous. ACF urges a national uniform approach to these regulations.

[END]

Sari Baird, ACF General Counsel, 5 April 2012