

Charitable fundraising regulation reform: Cancer Council Australia response to discussion paper

Cancer Council Australia is a federated organisation representing the national interests of its eight state and territory members. Collectively, Cancer Council is Australia's largest health charity and the largest nongovernment funder of cancer research, education and patient support services.

Cancer Council Australia therefore has a high stake in the current charity reform agenda translating to significant improvements to the sector, such as reducing administrative burden on charities while increasing transparency and accountability.

Core outcomes of the reform process should include more informed choice for donors and streamlined administrative requirements for charities, to help ensure donor funds can be more readily allocated to a charity's stated mission and purpose.

Responses to consultation questions

Chapter 2 – Defining the scope of regulated activities

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

Yes. It is critical that regulations are in place to ensure that only bona fide charities with formal charity status and appropriate disclosure mechanisms are authorised to engage in community-based fundraising.

There are, however, appropriate mechanisms already in place to regulate fundraising activities. While Cancer Council Australia, as a federated body, supports government action to streamline administrative requirements for charities to meet agreed accountabilities, we do not support any measure that will lead to additional bureaucracy and red tape.

State-based criminal and corporation law and a number of other legal instruments are already in place to regulate fundraising in the charity sector.

We would therefore only support additional federal regulation if it was accompanied by the removal or integration of state-based regulation, and ultimately led to a more efficient way to ensure that only bona fide charity entities sought to raise funds from the community.

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.

As a federated organisation, Cancer Council Australia cites the example of eight member bodies established under different state/territory-based governance structures and complying with a range of different jurisdictional laws and regulations. Any shift towards seeking efficient economies of scale through our federation encounters regulatory barriers caused by this multiplicity of instruments.

Notably, the Industry Commission's (now Productivity Commission) comprehensive 1995 report on charities in Australia¹ observed the inter-jurisdictional inconsistency of laws and regulations, and recommended (9.1):

“...the Council of Australian Governments should consider approaches to achieving greater efficiency and effectiveness of fundraising regulation among States/territories. Two suggested approaches are:

- uniformity of legislation; or
- mutual recognition of legislation.

¹ Industry Commission, Charitable Organisations in Australia, Australian Government 1995.

Specific consideration should be given to addressing issues of:

- public disclosure of the role of contract fundraisers;
- public nuisance and donor privacy; and
- the types of organisations to which regulation applies.”

Seventeen years later, there has been little progress in reducing the administrative burden on compliant charities in Australia.

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?

Although empirical evidence is limited, published research indicates a reasonable level of confidence in the charity sector and that adequate regulation, essential to confidence, is in place under current arrangements. For example, a study published by the Queensland University of Technology and focused primarily on bequests showed that community attitudes toward bona fide charities were positive, among both donors and non-donors. In general, non-donors cited their personal financial limitations, rather than a negative attitude to charitable organisations, as the primary reason for not providing bequests.²

Where public confidence is in question, actual or perceived expenditure on administration is a key concern. According to the Productivity Commission’s 2010 report, there is a perception that charities investing substantially in administrative costs and other “overheads” represents a “bad” use of donor funds.³ Given that the report was commissioned as a precursor to the current NFP reform agenda, it should be incumbent upon government to ensure that any policy outcome from this consultation translates to reduced administrative costs for the sector.

Negative publicity generated by (a minority of) organisations acting in breach of regulations can also impact adversely on the sector more widely. A streamlining of current arrangements, and a greater capacity for government to act against non-compliant operators, would in our view contribute to improved public confidence in the sector.

2.4 Should the activities mentioned above [see consultation paper] be exempted from fundraising regulation?

No, in principle all fundraising activities should be subject to regulation. Discretion could, however, be exercised by the regulator to determine the level of disclosure required depending, for example, on the scale and nature of an activity.

Tax deductibility should continue to be regulated by the ATO.

Fundraising undertaken by religious organisations should not be exempt from regulation.

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.

Cancer Council Australia is unaware of any relevant activities that should receive a specific exemption.

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 Queensland University of Technology, Australian Centre for Philanthropy and Non-profit Studies, *Charitable bequests and Australians*, 2008

³ Productivity Commission, *Contribution of the not-for-profit sector in Australia*, Australian Government, 2010.

We remain of the view that all organisations claiming to fundraise as charities should be subject to some level of regulation. As a minimum, there should be compliance with the basic disclosure practices of register, receipt and report, irrespective of scale.

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

No. Regulation should not be tied to a fundraising threshold. As well as the vagaries of assigning a meaningful dollar value, there are also the realities that charities will invariably seek to increase their income and that it is in most cases impossible to accurately predict revenue on a year-by-year basis. An increase in revenue beyond a projected threshold level could therefore result in a charity having to comply retrospectively with regulation.

The risks are further demonstrated by the proposal that \$50,000 might be a workable threshold amount. Allowing members of the public to collect up to \$50,000, without registering, receipting or reporting, could attract fraud and misappropriation – to the detriment of the entire sector. It would also encourage smaller, inefficient fundraising activities, which could weaken public trust and undermine the push for greater transparency.

In addition, a threshold creating two sets of rules – one for small and one for larger charities – creates an unnecessary level of complexity and uncertainty, for both organisations and donors. There should be one rule for registering, receipting and reporting – applicable to all charities.

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?

No. As a federated body, Cancer Council Australia's continues to hope that this reform agenda translates to a streamlining of regulation nationally, irrespective of an entity's size. If this process is effective in reducing red tape for charitable organisations, a single national regulator should be established with adequate capacity and flexibility to streamline administrative burden sector-wide.

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?

Yes, Cancer Council Australia believes that a transitional period of 1-2 financial years would be required to enable organisations to adapt to the reforms. This may be particularly important for federated bodies, with multiple members required to adjust, particularly if we are to translate the potential for reduced administrative burden into measurable positive outcomes on a national level.

Registering for fundraising activities

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

It is Cancer Council Australia's view that the ATO remain responsible for tax deductibility status and related financial arrangements.

The ACNC's role could include:

- contributing to greater transparency and donor choice around fundraising through oversight of the proposed public portal.
- developing fundraising guidelines in line with industry best practice, with the aim of guiding:
 - disclosure of information about the entity, use of funds, whom to contact for further information and an identifier for that particular activity for reference in discussions with the charity;
 - standards of operation – using FIA guidelines, standards and codes of practice

- ACNC should also take a policing role in relation to meeting these standards.

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

Yes. This would have the dual function of encouraging charities to participate and increase transparency, while enhancing choice for prospective donors.

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

No. A commitment to complying with regulation should be declared as part of a charity registering with the ACNC. The controls and recourse available to the ACNC and the courts, as outlined in points 28 and 29 of the discussion paper, should be sufficient to underpin compliance, without further administrative burden.

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

While firm action against offenders is essential, it should be noted that a highly skilled, deceptive and abusive individual staff member could have the capacity to undermine the work and standing of an otherwise ethical agency before discovery. Unlawful and inappropriate conduct – e.g. fraud, deception, misappropriation of funds and a range of other breaches articulated in existing laws and regulation – should therefore be judged on a case-by-case basis.

Arbitrary judgement, for example on the extent to which a rogue individual is the transgressor compared with a systemic culture of institutional corruption, should apply, with the penalty geared to the extent of organisational culpability. Permanent bans may be recommended in extreme cases, however stipulating a set ban for all offenders is in our view impractical.

Application of consumer protection laws to charitable fundraising

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

Yes, provided the provisions were applied where required on a case-by-case basis.

For example, Cancer Council Australia and its members involve thousands of volunteers in their major fundraising activities. (Australia’s Biggest Morning Tea, one of our flagship activities, is based on thousands of volunteers hosting an annual morning tea event.) It is unfeasible to expect the recipient charity to comprehensively police all these voluntary activities in the context of the ACL provisions.

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?

As stated in the discussion paper, Section 73 of the ACL regulates permissible calling hours for approaching a person face-to-face to make an unsolicited offer to supply goods and services. Permitted calling hours, which are default calling hours only and may be varied by State and Territory legislation, are:

- Monday to Friday – from 9am to 6pm; and
- Saturday – from 9am to 5pm.

Dealers are prohibited from approaching a person at any time on a Sunday or a public holiday.

Cancer Council Australia supports a continuation of these arrangements within the ACNC’s remit in relation to direct donor contact in forms such as telephone approaches and door-knocking. However,

a number of Cancer Council's most important fundraising events rely on activities conducted outside permissible calling hours. For example, flagship fundraisers such as Relay for Life and Australia's Biggest Morning Tea involve volunteers hosting community events on Sundays, when community participation is often highest. For these events to remain viable, they must be exempt from regulation restricting fundraising to permissible calling hours.

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?

Charity fundraising largely occurs opportunistically. If the regulations on unsolicited selling were applied to collecting donations, substantial existing fundraising activities may cease.

Charitable entities should be exempt from the unsolicited selling provisions of the ACL. Current regulations exist through the Telemarketing Industry Standard.

Chapter 4 – 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?

Yes, Cancer Council Australia supports this principle in the interests of accountability and transparency. (Consideration may need to be given on flexibilities for federated bodies that mass-produce printed materials for use by member organisations with individual ABNs.)

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?

Identifying that a collector or advocate is paid or unpaid has in our view no relation to whether a charity provides a valuable service to the community and a good return on donor funds. An official indicator that persons engaged in charitable fundraising activities are "authorised" should in our view be sufficient.

It is critical in Cancer Council Australia's view that all persons engaged in fundraising activity clearly display the name of the charity they represent and can produce a letter of authority verifying their role.

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

Identification should be a minimum requirement, along with an organisation's telephone number for contact. A collector's or advocate's first name and registered number should be sufficient for identification, enabling a member of the public to verify the collector's bona fides or to lodge a complaint if required. Requiring a representative in this context to provide their full name could put that at risk of personal harassment.

However, there should be some flexibility depending on the scale and nature of activity. For example, producing personally tailored badges for the thousands of unpaid individuals who assist in large-scale events such as Australia's Biggest Morning Tea and Daffodil Day would not be good use of donor funds and would therefore be highly counterproductive.

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

In our view unattended collection points, ads and printed material should where possible also provide contact information to help ensure they are bona fide.

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

Yes.

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

Consideration should be given to including:

- the charity name;
- the purpose for which funds are being collected – the cause;
- contact details of the charity or collection agent;
- the charity licence number or ABN; and
- the charity's or collection agent's website or national web portal website.

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

Cancer Council Australia does not support this as a mandatory requirement. However, linking to the ACNC could be encouraged and promoted to prospective donors as an indication of a charity's bona fides.

In addition, the format for disclosure should not be mandated by the regulator, as this could add another layer of administrative burden. It should be a matter for individual charities to decide how they link to the ACNC on their public documents.

Chapter 5 – Information disclosure after the time of giving

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

Cancer Council Australia supports this concept in principle. It is conceptually consistent with the proposal for the ACNC web portal providing a one-stop shop for prospective donors, with core information about the purpose and output of individual charities. Developing core qualitative criteria, however, may be a challenge and would require further consultation with the sector.

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?

Cancer Council Australia would support this requirement in principle, in the interests of increased transparency, however it would be unfeasible without allowing for consolidation and coordination of reporting.

For example, every one of the 35,000 individuals and groups who host an Australia's Biggest Morning is undertaking a fundraising activity; to expect them all, including those who raise sums less than \$10, to provide a direct remittance would deter substantial numbers of supporters. In these cases it should be a matter for the recipient charity to provide a consolidated remittance.

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

Cancer Council Australia supports further investigation of the question. An enhanced accounting standard has the potential to provide prospective donors with more informed choices and could lead to greater transparency and accountability. However, given that our members are already subject to a range of legislative and accountancy requirements, the introduction of a new standard would only be supported if it achieved its key objective while also reducing administrative burden.

5.4 What other fundraising-specific record keeping or reporting requirements should apply to charities?

None. Current legislation already provides a comprehensive framework.

Chapter 6 – Internet and electronic fundraising

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

Yes. As an increasing amount of transactions occur online, there should be a requirement for internet-based charity fundraisers to register with the regulator. There should, however, be a provision for a third-party fundraiser (including corporate partners) to fundraise on behalf of a registered charity, without the third party registering with the ACNC – provided the recipient charity is registered.

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?

Yes, provided flexibility is built into any regulation.

For example, as per response to 4.2, special consideration may be required for how this requirement could impact on federated organisations.

This would be a number of other cases where this is impracticable.

The key outcome of including an ABN should be to enable further investigation into a charity before making a donation. Ensuring that the ABN is present at the time of donating is important; most online promotional mechanisms will drive a prospective donor to website for donating, where the ABN should be mandatory.

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

Secure payment gateways and PCI (payment card industry)-compliant websites and processes should be requirement of registered charities seeking to fundraise online.

Chapter 7 – Fundraising by third parties on behalf of charities

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

Yes. Third party fundraisers should be required to register and abide by an FIA code of conduct or similar.

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

Yes. Third parties who collect on behalf of charities will be less inclined to undertake fundraising activities if burdened by an additional layer of bureaucracy. Many charities already require third parties to register their activities.

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?

No.

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

Yes.

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?

Yes, but not the amount paid. To reduce administrative burden, charities should be allowed to report this income as a percentage of the average return for each recruit after three years.

7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?

No.

7.7 Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?

Some regulation should be considered to help protect charities from the impact of fraudulent activities undertaken private participators. However, flexibility would be required.

It would be idealistic to have a public register of any or all cause-related marketing activities. The challenge would be that some of these activities would be of low value and the regulatory burden of reporting would be further disincentive for organisations to participate. Activities that are promoted nationally could be required to register the financial gain from any cause-related marketing, so that a consumer knows the value that goes to the charity following their support. The main interest in this register is likely to be the media rather than members of the public, and it is unlikely to have any impact on public confidence in the charitable sector.