

Charitable Fundraising Regulation Reform Discussion Paper

April 2012

Submission to the Charitable Fundraising Regulation Reform
Discussion Paper by Charities Aid Foundation (CAF) Australia

For the attention of:

Charitable Fundraising Regulation Reform Discussion Paper
Infrastructure, Competition and Consumer Division
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Executive Summary

Charities Aid Foundation (CAF) Australia agrees with the underlying intent of this regulatory reform and supports improved, effective and where possible cost reductions for donors and charities through “a new nationally consistent approach to regulation of charitable fundraising.”

CAF sits in a unique position within the Australia Taxation Office not-for-profit structure in that it is a recipient of donors’ funds and a grant maker of those funds without being a fundraiser per se’ in its own right.

Our business model encourages transparency at all times in the collection, investment, expenses incurred and distribution of funds – and CAF believes a national uniform development in Australia of legislation and fundraising training will benefit the giving sector.

The proviso on this is that it seeks to reduce actual fundraising costs along with ‘red tape’ and below the line expenses.

The ongoing reform within Public and Private Ancillary Funds, establishment of the ACNC, the definition of ‘charity’, the AusAID review and development of Civil Society engagement all contribute to a more responsive and effective giving culture.

The key to success for these reforms / developments is that the outcomes bring about greater efficiencies and strengthen the processes involved to build confidence and participation by donors.

Responses to the Discussion Paper

Consultation question:

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?

Question 2.1

Yes, there does need to be specific regulation for charitable fundraising. This is required to develop, encourage and maintain best practice fundraising activities to ensure confidence in fundraising motives, activities and outcomes across Australia.

Where there is a consistent state-by-state/territory framework it allows for uniform marketing of fundraising campaigns at a reduced expense.

Question 2.2

The cost of current Fundraising Licences state-by-state is a cost burden and a time consuming practice (e.g. a police check costing some \$80 in NSW is required for fundraising licenses in Western Australia).

Consultation questions

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?

If so, please provide an explanation of why the relevant activities should be exempt.

Question 2.4

This is a broad group of entities with diverse knowledge, experience and capability in relation to donor funds management to be combined into one group and assure protection of donor’s funds.

- Government grants and the information supplied to access them may be well covered by current legislation relating to falsely obtaining Commonwealth funds – and could be exempt from fundraising legislation.
- Many corporate Private Ancillary Funds have regular need for due diligence and validation on granting charitable donations and validating banking processes etc - and could be exempt from fundraising legislation.
- In the case of CAF (a public ancillary fund), around 90 percent of corporate donations secured in any given year are granted to charities within the year, requiring ongoing investigation of charities. CAF is accountable to the ATO and if in breach of guidelines are subject to significant fines. CAF believes that effective third party entities provide a valuable service in ensuring that appropriate due diligence is undertaken and, particularly in CAF's case, where donor and charity transparency is paramount to provide added confidence around donor giving.

CAF services are sought out by corporate and organisational entities seeking CAF's strict due diligence and reporting to provide quality governance assurance and relief for grant makers.

However many corporate (and private) Private Ancillary Funds do not have the expertise or legislative knowledge to ensure proper due process. While the status of DGR is a base check for approval to pay there are at times other factors that need to be considered.

CAF works with many corporate entities providing their employees with access to Workplace Payroll Giving programs, volunteer and fundraising (company) matching. These donors need to have ongoing protection and comfort that there are stipulated regulations governing those funds, which CAF provides plus a clear audit trail of donations granted.

Example: Recently CAF was in discussion with an entity that had been formed by a number of charities to be its centralised fundraising collector. This new entity does not hold DGR status and CAF was unable to transfer employee and matched Workplace Payroll Giving donations. In researching this situation CAF was advised that many companies often made direct donations to this entity and were issued receipts from another DGR entity – showcasing the lack of understanding around the meaning and legal implications of a DGR entity.

There needs to be a maintained standard of rules and processes of fundraising requirements across the board to ensure donors can not only believe the right attitude and processes are in place but that they are being carried out – because of required compliance.

Consultation questions:

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?

General Response

Any smaller agency – NFP or commercial – can be more impacted by operational costs that a bigger entity absorbs readily.

By setting a \$50,000 exemption threshold opportunities may be introduced for unscrupulous and/or poorly managed fundraising campaigns outside of the standards set for higher income groups.

This would leave donors to these smaller campaigns vulnerable and if publicised contaminate the giving intent of donors involved with giving to organisations above the threshold as well.

Consultation questions:

- 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?

General Response

The ACNC registration should be sufficient to allow DGR charities the right to fundraise – subject to fundraising regulations. These regulations need to maintain publicly acceptable standards in both traditional fundraising and the rapidly evolving online platforms. In both the old and new fundraising mediums manageable and transparent levels of governance need to be displayed.

This is vital to ensure public confidence and support for fundraising initiatives.

There is also a need to understand and accommodate company efforts to encourage staff and customer giving within their business activities. E.g. Workplace Giving, customer donations etc.

Question 2.13

CAF proposes actions against charities in breach of fundraising legislation need to be a two handed approach:

1. a first and minor breach responded to with minimal penalty and education;
2. repeat breaches or significant deviation from legislation requires public and firm punitive action to maintain donors confidence in the processes.

Illegal actions such as theft, fraud, misappropriation, false advertising etc. should face traditional legal consequences and the penalties that apply.

Consultation question:

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

Yes.

Consultation question:

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?

Question 3.3

Yes, the public in general and donors in particular in this case deserve the right to be protected. Charities, and their agents, should not be exempt from ACL legislation.

Consultation questions:

- 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?

Question 4.1

Yes the ABN should be used wherever practicable. Exceptions could apply to marketing/promotional materials that are small in size e.g. a collection box on a shop counter. Individuals seeking information on a charity are more likely to remember the name than the ABN number and will be able to trace the charity through a website search or through the ACNC.

Question 4.2

There has been an historical belief that charity collectors have been volunteers or staff of the entity. Growing use of paid collectors and the impact their fees have on the donor's initial contribution is affecting public perception. Identification of a volunteer (or the professional collector) on the general identification badge should be considered. CAF would encourage a greater degree of transparency when it comes to third party fundraisers.

Question 4.3

Yes. If not a contact detail at least a clearly visual name of the organisation to allow further research, contacting, reporting.

Question 4.5

Yes. This allows donors to seek a tax deduction receipt which they are fully entitled to.

Question 4.7

This can become a burdensome requirement given the confines of graphic design within promotional materials. However it should be 'encouraged' on charity website as individuals seeking satisfaction on an issue relating to that charity will often start their process there. [A similar situation occurs with Radio and TV broadcasting requirements where the licence holders are required to promote grievance procedures on their stations.]

Consultation questions:

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?

General Response

Third parties should be exempt from such requirements. In the case of CAF granting funds to over 1000 charities each year, such reporting at any level beyond high level quantitative data would become unnecessarily burdening.

A free form response to the matters listed in 5.1 through 5.4 we believe is unworkable and will add to the complexity, time and cost of improved reporting.

The inclusion of base statistics might include fundraising cost to income ratio.

Consultation questions:

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?

Question 6.1

CAF submits that there needs to be caution with this proposal. There needs to be a full understanding of the infrastructure that organisations such as CAF provide; and the intranet fundraising facilities provided by employers and other commercial entities raising funds in good faith (not as a commercial offering).E.G: Employers promoting workplace giving efforts.

Example: CAF Foundation Accounts (DGR) and CAF Trust Accounts (non DGR) are used for the collection, management, governance and transparency of funds collection. In some cases online giving is encouraged/organised by independent entities – usually within the employee group or the customer base. The organisers of these campaigns do not receive any fee or commission. CAF manages those funds and provides due diligence and validation of receiving NFP's.

Question 6.2

The use of the ABN is an important identifying code that provides a quick 'first check' of authenticity. However, in terms of future research, enquiry or action it is more likely that an individual will remember the name of the fundraising entity and base further communications on that identifier.

Consultation questions:

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?

General Response;

CAF is a DGR not-for-profit providing consultancy guidance and the back office infrastructure for the collection of donors' funds. Working with Employers this includes Workplace Payroll Giving, volunteer programs and staff fundraising efforts; with corporates it involves providing Foundation accounts for their matching and grant making programs; and with individuals it supports their philanthropic Foundation planning.

At all times CAF works within – and at times above – the codes of conduct established by the likes of Philanthropy Australia, the Fundraising Institute of Australia and ACFID. The CAF Deed of Trust, ATO, ASIC, State Fundraising laws and all other statutory requirements are adhered to.

CAF is transparent re its fees and its role in being an effective passage of funds from donors to over 1,000 charities annually.

There are rapidly increasing numbers of commercial third party entrepreneurs entering the giving sector attracted to the financial opportunities. There are recent media highlights of the unacceptable tactics and high fees being charged by some of these agencies.

CAF cautions that agencies such as CAF; employers working with staff to encourage philanthropy through 'office' activities such as workplace giving; and other companies actively involved in fundraising with their staff and customers for no benefit of their own need to be quarantined from legislation curtailing unsavoury third party activity.

Example: CAF is guiding and supporting a national shopping chain in its philanthropy endeavours. CAF is working with this company in accessing Fundraising Licences; is guiding them in the wording of information to be affixed to collection boxes (and the requirements of handling/accounting those donations); is establishing a Foundation Account for the company to donate funds for matching of customer donations; guiding them in the choice and relationship development with recipient charities; providing due diligence, validation on those charities; managing all funds in a transparent way within pre established and agreed parameters; providing a full audit trail and online reporting to ensure transparency at all times; and granting the funds as required.

This is an effective and proper way for third party providers to perform.

Appendix

Charities Aid Foundation (CAF) Australia

Charities Aid Foundation (CAF) is a charity dedicated to getting the best for other charities and their donors. Founded in the United Kingdom in 1924, and in Australia in 1999, we are committed to facilitating the most effective and efficient ways to connect donors to the causes that matter to them and for money to get where it's needed.

We facilitate giving through the CAF Community Fund – a Public Ancillary Fund (ABN 75 706 087 297). CAF Australia is Trustee for the CAF Community Fund.

Our Mission is “Motivating society to give ever more effectively, helping to transform lives and communities around the world.”

CAF administers donor programs including the provision of CAF Community Foundation sub funds (“Foundation Accounts”), Grant Making, Workplace Payroll Giving, Company Matched Giving and International cross border donations.

CAF Australia has granted over \$100 million to charitable and community entities since 2000 and currently disburses funds to over 1000 charities and community organisations each year.

CAF seeks to work with donor fundraisers and provide guidance and support for some fundraisers through Fundraising Licences maintained by CAF and regulated by the individual States.

CAF works with donors and recipient charities to encourage and maintain best practice fundraising and effective distribution of those funds.

