



ChildFund Australia Submission to the
Charitable fundraising regulation reform

ChildFund Australia
Lvl 8, 162 Goulburn Street, Surry Hills NSW 2010
Contact: Evelyn Henson
P: +61 2 8281 3135 | F: +61 2 9264 3533
E: ehenson@childfund.org.au | W: www.childfund.org.au

ChildFund Australia Submission to the Charitable fundraising regulation reform discussion paper

Introduction

ChildFund Australia is an independent and non-religious international development agency that works to reduce poverty for children in the developing world. ChildFund Australia directly implements child-focused development programs in Vietnam, Papua New Guinea, Cambodia and Laos, and works in conjunction with the ChildFund Alliance global partnership to deliver programs in countries throughout Asia, Africa and the Americas.

ChildFund Australia is a member of the ChildFund Alliance – a global network of 12 organisations that assists more than 16 million children in 52 countries.

ChildFund Australia is a registered charity, compliant with the ACFID Code of Conduct, fully accredited by the Australian Agency for International Development (AusAID) and a designated AusAID partner.

ChildFund Australia is one of the largest Australian non-government aid agencies with total revenue of \$40m in FY11. Most of ChildFund's revenue comes from the Australian public through child sponsorship contributions, other regular giving, donations and bequests. Approx 11% of revenue is from Government grants.

ChildFund Australia uses a wide range of fundraising methods and requires that all staff and third-party fundraisers comply the ACFID Code of Conduct, the Fundraising Institute Australia (FIA) Principles & Standards of Fundraising Practice, relevant ChildFund policies, as well as all relevant state and federal regulations.

ChildFund welcomes proposed reform to the Australian non-profit sector if it can deliver a more integrated, transparent, streamlined system for the regulation of charities.

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?

ChildFund Australia believes it is critical to have specific regulation that deals with charitable fundraising in order to ensure the ethical and appropriate conduct of charities and to maintain public confidence. However the level of regulation has to be reasonable, commensurate with the risks and must ensure that compliance costs are not excessive.

It is vital that new regulations for charitable fundraising are not simply added as another layer on top of the array of fundraising regulations that already exist. New regulation should replace or rationalise the existing state based regulations. Currently, ChildFund Australia has to deal with six different state based, and one territory regulatory system. This is costly for the organisation.

Each year ChildFund must submit separate and different annual returns to each of the state/territory regulators. Additionally, ChildFund has to monitor changes in legislation, respond to changes, amend business processes and submit fundraising licence applications (which all have different application and reporting time frames.) Managing the reporting to seven separate bodies is enormously time consuming and complicated.

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.

The list of exemptions in the discussion paper is inadequate and the rationale for selecting these and not others is far from clear. The difficulty stems from a very broad definition of 'fundraising activities'. It is likely that many more exemptions will need to be made if this definition is used, eg, foundations, bequests, donated goods, inter-charity transfers, community fundraising, major gifts. It will be more effective to focus on regulation of entities rather than regulating specific activities.

The suggestion in paragraph 19 that some activities such as lotteries continue to be regulated by State law, goes against one of the main aims of the reform agenda which is to simplify and streamline the many regulatory systems currently existing.

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?

ChildFund Australia agrees that a threshold amount is appropriate to ensure that small charities don't get caught with proportionately high compliance costs. But some small charities may still want to register with the ACNC and should be allowed to do so. In other words, it should be optional for small agencies.

However it is of great concern to suggest that State and Territory regulations be continued as is. The reform agenda for charities must deliver a simplified, integrated, national regulation and reporting system - not simply add another layer on top of State legislation.

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?

The ACNC should administer the fundraising regulation.

Charities registered on the ACNC should be automatically authorised for fundraising in order to ensure continuity of operation and to allow time for charities and the ACNC to adjust to the new regime.

The main emphasis in the new fundraising regulation should be on regulation of the entity.

Consultation question:

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

ChildFund Australia supports the application of the listed provisions of the Australia Consumer Law to the fundraising activities of charities. These are consistent with the Australian Council for International Development (ACFID) Code of Conduct that has been extremely effective in encouraging the ethical conduct of aid agencies.

Consultation question:

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

ChildFund Australia believes that these restrictions on calling hours are problematic. They would effectively prohibit door knock appeals and other forms of fundraising generally accepted by the public. Charities have an exemption from the 'Do Not Call Register'. Charities are aware of the need to be restrained in their hours of operation in order to achieve effective fundraising results. There does not appear to be evidence of strong public concern about the hours at present.

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?

ChildFund Australia believes that charities should be exempt from the unsolicited selling provisions of the ACL. On the whole, the activities of charities do not involve the selling of goods or services and are not operating in the domain of 'trade or commerce'. When donors

agree to a give a regular, ongoing donation to any charity they are free to cancel at any time, with no notice period or penalty applying.

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?

ChildFund supports the suggestion that charities state their ABN on public documents as well as contact details for the ACNC. However clarity is needed on what constitutes a public document for this purpose. Clearly it should encompass such things as annual reports, sign-up forms and websites. But it should not be taken to mean everything that is in the public domain as this might include merchandise, receipts, email notices, radio and print advertisements.

ChildFund also agrees that fundraising collectors should be required to wear name badges that identify the charity and the collection company (if applicable). If asked, they should disclose whether or not they are a paid collector. However it is not appropriate and would be a breach of privacy for collectors to have to provide details on how much they are paid or details of the payment arrangement between the charity and the collection company.

It is crucial that these regulations be standardised across States to avoid the confusing mixture of arrangements currently in place.

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?

It is desirable that reporting requirements to donors include qualitative information about beneficiaries, activities and outcomes. ChildFund regularly reports this information to supporters and the ACFID Code of Conduct requires this of agencies. However it is very difficult for a government regulator to prescribe and administer, and therefore this proposal is not supported. It should be recognised that some donations are untied, eg bequests or major donations where there is no directed purpose for the donation.

Given the vast number and variety of fundraising activities conducted by a charity such as ChildFund, it is not realistic to report specific details of costs in relation to each activity. It is much more realistic – and much more informative for supporters – to report overall results and details of costs on an annual basis. The ACFID Code of Conduct provides an excellent guide for determining the format and type of information reported to donors.

It is expensive and unnecessary to have fundraising-specific legislated accounting and audit practices for charities. The critical role of the regulator should be to ensure that entities are properly governed, managed and administrated in accordance with established accountancy principles and laws.

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?

It would be desirable for internet fundraising to be limited to those entities registered with the ACNC, but it is unrealistic given the unbounded global access and trade on the internet. Already many offshore entities fundraise within Australia.

Australian charities should clearly state their ABN on their website, but it is not necessary to state this on every piece of communication.

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?

Regulation is not required for third party fundraising. Paid third party fundraisers are contracted to the charity. It is clearly the legal and ethical responsibility of the charity to manage the contractor. The role of the Government regulator (the ACNC) should be to regulate the conduct of the charity and expect the charity to manage the conduct of the contractor.

Similarly, there is no necessity for third party fundraisers to register with the ACNC.

It is appropriate for third party collectors to disclose, if asked, if they are paid or unpaid. However it is inappropriate and a breach of privacy for collectors to be required to state how much they are paid, or details of the payment arrangement between the charity and the collection organisation.

It should be remembered that nearly every form of fundraising involves some cost or fee paid to a supplier. Whether it is a television commercial, newspaper advertisement, door knock, face to face marketing in a shopping mall, telemarketing or selling tickets for an art union, all involve payment of fees to companies. If (contrary to the view expressed in this submission) third party fundraising collectors are required to disclose their fees, an equivalent disclosure should be required for other forms of fundraising.

Care must be taken to ensure that unpaid third parties are not captured by the regulation, ie, community fundraisers should not be drawn in to the new ACNC regulation. Individuals who undertake 'fun runs' or hold private functions or other activity to raise funds for a cause should not be subject to such regulations.

