



Consumers
Health Forum
of Australia

Ref: S1111

4 April 2012

Charitable Fundraising Regulation Reform Discussion Paper
Infrastructure, Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam,

Charitable Fundraising Regulation Reform

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide comments on the Treasury's Consultation Paper, *Charitable Fundraising Regulation Reform*.

CHF is the national peak body representing the interests of approximately two million Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF welcomes the proposal for charities registered with the Australian Charities and Not-for-profits Commission (ACNC) to be automatically authorised for fundraising activities and argues that this should replace existing jurisdictional requirements. We believe that this would enable the ACNC's public information portal to become a single platform from which fundraising organisations could consistently demonstrate high standards across the Australia. It would build on the transparency provided through the portal, increase public trust and confidence in the charity sector, and eliminate poor practice.

CHF, and its members, look forward to ongoing involvement in the reform of charitable fundraising regulation to achieve a truly national light-touch approach administered through the ACNC. If you would like to discuss the issues raised in this attached submission in more detail, please contact CHF Project and Policy Officer, Jo Talbot, on 02 6273 5444 or at j.talbot@chf.org.au.

Yours sincerely,

Carol Bennett
CHIEF EXECUTIVE OFFICER



**Submission to the Treasury on
*Charitable Fundraising Regulation Reform***

April 2012

Submission to the Treasury on Charitable Fundraising Regulation Reform

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Introduction

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide comments on the Treasury's Discussion Paper, *Charitable Fundraising Regulation Reform*.

CHF is a not-for-profit (NFP) organisation, and our member organisations reach millions of Australian health consumers across a wide range of health interests and health system experiences. CHF policy is developed through consultation with members, ensuring that CHF maintains a broad, representative, health consumer perspective.

CHF has previously provided input to the Productivity Commission's Draft Research Report on the *Contribution of the Not-for-Profit Sector* in December 2009, and to the Treasury's Scoping Study for a *National Not-for-Profit Regulator* in February 2011, Consultation Paper on *Not-for-Profit Tax Concessions* in July 2011, and Consultation Paper on a *Definition of a Charity* in December 2011. CHF is also a signatory to the National Compact between the Australian Government and the NFP sector.

CHF has provided comments below in response to the questions from the Discussion Paper.

Defining the scope of regulated activities

Is regulation necessary?

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

It is a widely acknowledged fact that the work of fundraisers is vital in helping organisations across Australia deliver benefit to the varied causes they support. As highly visible and energetic ambassadors, fundraisers are at the forefront of building the public support and confidence that charities rely on to succeed. If this confidence is eroded by publically unacceptable behaviors, dubious tactics or unclear processes, then the actions of fundraisers can also fatally tarnish their charity's reputation. Reputation has a direct and major impact on the corporate wellbeing of every organisation, be it an international charity, national cause or local delivery organisation. That is why the professionalism of fundraisers is so important.

In this context, CHF welcomes the proposal for charities registered with the ACNC to also be automatically authorised for fundraising activities, and argues that this should replace existing jurisdictional requirements. This would reduce the administrative burden and compliance costs faced by charities under existing regulation. It would also provide a quality management system based on exception reporting and build on the transparency provided through the ACNC's public information portal, enabling charities to consistently demonstrate high standards across Australia. This would, in turn, help to increase public trust and confidence in the charity sector and eliminate poor practice.

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?

CHF does not have the resources to consult on the costs faced by its members under existing fundraising legislation. However, the following submissions to the Productivity Commission's *Report on the Contribution of the Not-for-Profit Sector*, January 2010¹, provide evidence to demonstrate that these are significant:

The regulatory burdens faced by non-profit organisations operating across jurisdictions are significant, particularly in fundraising. Due to the varying requirements of state and territory legislation and regulation, it is not possible for a national organisation to run a single national fundraising campaign. In order to comply with various jurisdictions' regulation, national campaigns must be tailored for each state or territory. This presents a significant drain on resources and capacity for national organisations, which adversely impacts service delivery and operational effectiveness (FIA, p. 138).

A 2005 survey of FIA members indicated that ... 50 per cent worked across state borders, and are therefore currently required to meet different regulations in each state in which they fundraise (p. 138).

This unnecessary red tape continues to hinder NFPs in the delivery of their services and has a real impact on the effectiveness of the sector as a whole, particularly as more NFPs engage in cross-border fundraising through the use of new technologies (PilchConnect, p. 138).

A further indication of the burden is the added cost to individual NFPs, which can be substantial. The FIA, for example, drew attention to World Vision Australia, which has stated that reporting in line with inconsistent fundraising legislation costs it at least \$1 million per year.... In some cases, as the National Roundtable for Nonprofit Organisations indicated, these costs are such to prevent... national fundraising:

The Music Council of Australia is registered to fundraise in one state despite its being a national organisation. The Council's Executive Director, states 'it is a time consuming process [to register to fundraise in each state] and beyond the resources of MCA' (p. 139).

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?

CHF does not have the resources to consult on the costs faced by its members under existing fundraising legislation. Again, submissions to the Productivity Commission's *Report on the Contribution of the Not-for-Profit Sector* provide evidence to demonstrate that this is significant. The National Breast Cancer Foundation described current State and Territory legislation as:

¹ http://www.pc.gov.au/__data/assets/pdf_file/0003/94548/not-for-profit-report.pdf

... fragmented, inefficient; fails to deal adequately with national fundraising appeals; fails to regulate modern trends in fundraising; and in consequence does not adequately protect the community from inappropriate or fraudulent fundraising activities (p. 138).

Activities that might be exempt from fundraising regulation

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

CHF supports exemption of the following activities from fundraising regulation:

- Soliciting for government grants
- Corporate donations or donations from public and private ancillary funds
- Workplace appeals for assistance for colleagues and their families
- Donations to religious organisations from their own members
- Partnerships or project funding from Trusts and high wealth individuals
- Smaller scale local fundraising activities raising less than \$50,000 per annum.

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

CHF supports the exclusion of lotteries and raffles from fundraising regulation as these fall under State and Territory gaming and gambling laws. CHF also argues for the exemption of auctions from fundraising regulation as they fall under ACL. Charities and NFPs wishing to hold auctions also need to comply with tax requirements, which are complex in Australia.

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.

Smaller charities make up about 50 percent of the sector. The majority of their funding comes from donations and government funding.

Managing a community organisation such as ECHO is not unlike running a small business, and requires considerable daily administrative work, attention to statutory requirements, adequate and informative filing systems and accounting systems of some complexity. Administration has become a large part of the work of the project staff, and places additional strain on management committees.²

With fewer resources, smaller charities are less able to comply with a wide range of regulatory requirements. Competition for funds has put pressure on organisations to develop more professional and sophisticated techniques for raising money. There is also considerable potential for Australians to increase their giving to charities; however, current fundraising regulation limits charities' potential for growth, even through legacies and bequests which incur the lowest investment of these activities.

² Sub. 341, p. 12, in *Charitable Organisations in Australia*, Industry Commission, June 1995, Appendix D, p. 9.

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

CHF welcomes the Government's proposal to exempt entities with an annual fundraising income of \$50,000 from national fundraising regulation.

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?

Given that smaller scale fundraising is likely to present less risk to the community in terms of loss or fraud, CHF supports exemption of smaller entities from all fundraising legislation.

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?

CHF recommends charities be given 24 months to register with the ACNC and be granted authorisation for fundraising activities. This timeframe will also allow each jurisdiction to either adopt the new national approach or in some way refer their existing regulatory activity to the new national fundraising regulations.

Registering for fundraising activities

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

CHF welcomes the introduction of the ACNC public information portal and argues that this should provide the window on the sector, enabling the public to monitor the fundraising activities of charities, and reducing the need for Government intervention at both the jurisdictional and national level.

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

Subject to the condition that national fundraising laws are proposed for all entities that meet the definition of a charity, CHF welcomes the Government's proposal to allow all charities registered with the ACNC to also be authorised to engage in fundraising activities across Australia, and argues for this to replace existing jurisdictional requirements.

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

CHF believes that charities registered with the ACNC and authorised to engage in fundraising activities across Australia should be encouraged to sign up to the Fundraising Institute of Australia's Principles and Standards of Practice. This supports principles-based

regulation, which informs the proposals outlined in the Discussion Document, enabling increased reliance on principles and outcome-focussed rules to achieve more effective and efficient regulation of the sector. Fundraising charities would visibly demonstrate their commitment to best practice by using the FIA “Tick of Confidence”. This would provide a positive way to encourage best practice and avoid the need for punitive measures such as the extension of some of the generic provisions in the ACL to fundraising activities. (See response to question 3.1.)

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

CHF welcomes the Government’s proposal that the ACNC should have the power to ban a charity from fundraising in the event that it becomes insolvent. CHF supports the position outlined in the Community Council of Australia’s submission, that conduct that is misleading or deceptive within the definition of the ACL and has resulted in a conviction or successful civil action should result in a review of a charity’s authority to fundraise:

It is important that the ACNC has the power to investigate and enforce these provisions, and also determine the extent of any suspension or ban applied to individual charities. The circumstances in which a suspension might be applied will vary greatly from repeated minor mistakes to large scale and deliberate misrepresentation. The ACNC should have the capacity to impose penalties that are proportionate to the nature and extent of improper behaviour by individual charities.

Chapter 3: Regulating the conduct of fundraising

Application of consumer protection laws to charitable fundraising

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

CHF notes the existing provisions under the ACL and argues that it would be unnecessary to extend the scope of this law to cover charitable fundraising activities, as these types of conduct would result in the charity being discredited by the public, or banned from fundraising under the proposals outlined above.

Charitable fundraising 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?

CHF welcomes the Government’s proposal to restrict calling hours for charities under Section 73 of the ACL, and argues for national consistency in relation to 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?

CHF argues that the ACNC public information portal would support a blanket exemption for charities from the unsolicited selling provisions of the ACL and reduce compliance costs for popular fundraising activities such as auctions. Alternatively, the unsolicited selling provisions of the ACL may be left untouched and thus apply only to activities involving the supply of goods or services exceeding the value of \$100 outside of the business premises of the supplier or over the phone.

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?

CHF supports the proposal that all charities should be required to state their ABN on all printed and web-based material. CHF supports the position outlined in the CCA submission regarding the impracticality of this in telephone and mobile phone giving.

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?

CHF recommends that this information should be required to be provided on request.

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

CHF supports the proposal that 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?

CHF recommends that all unattended collection points, advertisements or print materials should state the charity's contact details and ABN.

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

CHF recommends that charities be required to disclose whether or not they have DGR status, and urges the Government to improve public awareness of this endorsement by including details about eligibility for DGR status on the ACNC website.

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

CHF recommends that fundraising charities should also be required to display the FIA 'Tick of Confidence'.

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

CHF supports the proposal that charities be required to provide contact details of the ACNC and a link to the ACNC website on any newly printed 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?

CHF supports the proposal that reporting requirements contain qualitative elements, such as a description of the beneficiaries and outcomes achieved for charities that have an annual income of over \$1 million, as the costs involved in collecting outcome and impact information are often very high.

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?

CHF supports transparent reporting of any fundraising activities. However, CHF supports the position outlined in the CCA submission that the cost of collecting this information needs to be considered against what might have been achieved if the same resources had been allocated to the charitable activities. Therefore, CHF recommends that if such measures were taken, the ACNC would be responsible for providing balanced information to the general public by making clear the cost of evaluating charitable activities, as well as the long-term investment needed for some types of fundraising.

According to the UK Public Fundraising Regulatory Agency³, the long-term ratio of costs to income for face-to-face fundraising differ from charity to charity, but are not likely to be less than 1:2.5 over a five-year period. In other words, for every \$1 charities spend on face-to-face fundraising, they will raise at least \$2.50 over a five-year period. Therefore, across the entire fundraising campaign, it will take an average charity about 26 to 28 months to break even (ie recoup the full amount of money it spent on fundraising).

The benefit of this type of fundraising is that it enables charities to recruit long-term supporters who will make monthly donations for three, four or five years, or even longer. Although about half of the people who sign up through face-to-face fundraising will stop giving in the first year, those that stay beyond 12 months tend to stay for quite a long time and form the bedrock of a charity's supporter base.

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

CHF recommends that, beyond existing reporting requirements, additional reporting requirements should be proportional to the size of the registered entity as outlined in the Australian Charities and Not-for-profits Commission Exposure Draft Bill 2012. Therefore, small to medium entities with an annual revenue of less than \$1 million should be able to submit an annual return or income and expenditure statement, and information statement. Large entities with an annual revenue of greater than \$1 million should submit audited accounts and annual reports. Any statutory funding bodies will have additional reporting requirements.

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

CHF notes the existing record-keeping requirements and argues that these are sufficient for fundraising purposes. CHF also refers to its submission to the Treasury on the Exposure Draft ACNC Bill 2012 with regard to future reporting requirements.

Chapter 6: Internet and electronic fundraising

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

CHF supports the proposal that internet and electronic fundraising be prohibited unless conducted by a charity registered with the ACNC.

³ http://www.pfra.org.uk/face-to-face_fundraising/how_much_does_f2f_raise_for_charity

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?

CHF supports the proposal that charities conducting internet or electronic fundraising be required to state their ABN on all printed and web-based communications. (Also see response to question 4.1.)

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?

CHF supports the proposed definition of third party fundraisers as entities that raise funds on behalf of a charity in return for a direct financial or other direct benefit.

CHF also supports the requirement for all third party fundraisers to state the name, contact details and ABN of the charity they are fundraising on behalf of on all printed and web-based materials.

Finally, CHF supports the proposal for third parties to disclose themselves; however, given that some forms of fundraising, such as face-to-face fundraising, take an average charity campaign approximately 26 to 28 months to break even, CHF does not support public disclosure of the amount of the donations that will ultimately be received by the charity.

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

CHF supports disclosure of all third party fundraisers, regardless of whether they receive a financial benefit, in addition to a requirement that they state the name, contact details and ABN of the charity they are fundraising for on all printed and web-based materials.

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?

CHF would welcome an initiative to create a public register of third party fundraisers as a means to eliminate public nuisance. CHF supports the position outlined in the CCA submission that this could be achieved through voluntary self-registration, as it would be in the interests of third parties to ensure visibility and good performance among their competitors.

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

See response to 7.1.

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?

See response to 7.1.

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

CHF recommends that this information be required to be provided if requested.

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

CHF notes that private participators seek involvement in charitable fundraising to promote their public profile, and that charities are discerning about the types of private organisations with which they chose to become affiliated. Therefore, CHF argues that the public nature of this type of fundraising is self-regulating.

Conclusion

CHF welcomes the opportunity to provide comments on the Treasury's Discussion Paper on *Charitable Fundraising Regulation Reform*, particularly in the context of ongoing reform of the not-for-profit sector.

Our submission welcomes the proposal for charities registered with the ACNC to be automatically authorised for fundraising activities and argues that this should replace existing jurisdictional requirements. We believe that this would enable the ACNC's public information portal to become a single platform from which fundraising organisations could consistently demonstrate high standards across the Australia. It would build on the transparency provided through the portal, increase public trust and confidence in the charity sector and eliminate poor practice.

CHF and its members look forward to ongoing involvement in the reform of charitable fundraising regulation to achieve a truly national light-touch approach administered through the ACNC.



The Consumers Health Forum of Australia (CHF) is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF does this by:

1. advocating for appropriate and equitable healthcare
2. undertaking consumer-based research and developing a strong consumer knowledge base
3. identifying key issues in safety and quality of health services for consumers
4. raising the health literacy of consumers, health professionals and stakeholders
5. providing a strong national voice for health consumers and supporting consumer participation in health policy and program decision making

CHF values:

- our members' knowledge, experience and involvement
- development of an integrated healthcare system that values the consumer experience
- prevention and early intervention
- collaborative integrated healthcare
- working in partnership

CHF member organisations reach millions of Australian health consumers across a wide range of health interests and health system experiences. CHF policy is developed through consultation with members, ensuring that CHF maintains a broad, representative, health consumer perspective.

CHF is committed to being an active advocate in the ongoing development of Australian health policy and practice.