

FUNDRAISING INSTITUTE AUSTRALIA

Australian Charities and Not for profit Commission Review

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FUNDRAISING INSTITUTE OF AUSTRALIA

Australian Charities and Not for profit Commission Review

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SUBMISSION

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ABOUT FIA

With over 1500 members, Fundraising Institute Australia is the largest representative body for the \$12.5 billion¹ charitable and not-for-profit fundraising sector, which is supported by some 14.9 million Australians. FIA members include charities operating domestically and internationally, as well as the organisations and professionals that provide services to them. FIA advocates for the interests of the sector, educates fundraising practitioners, promotes research and creates forums for the exchange of knowledge.

As part of its system of self-regulation for the sector, FIA administers a [Code](#)² which is concerned with ethics in fundraising. The Code has recently been updated with improved protections for people in vulnerable circumstances, stronger governance standards, greater supply chain accountability, compulsory Code training for fundraisers, continuous compliance monitoring by an independent Code Monitor, and the establishment of a Code Authority to oversee compliance, complaints handling and administration. Adherence to the Code is a requirement of all FIA members, however non-member fundraisers may choose to voluntarily follow it and are encouraged to do so.

INTRODUCTION

Fundraising is in the anomalous situation of being integral to the ACNC's first and most important 'trust and confidence' object, but not subject to ACNC regulatory power; regulation of fundraising resides with the states and territories.

¹ Source: Giving Australia 2016

² Appendix 1 to this submission; also at <https://www.fia.org.au/pages/-fia-code-790.html>

Nevertheless, the terms of reference for this Review have allowed for consideration of matters outside the ACNC legislation by providing that:

Some issues may be identified by the review panel that fall outside the scope of a statutory review of the ACNC legislation. The review panel should advise government of these matters and recommend whether further examination should be undertaken.

In accordance with the terms of reference this submission is divided into two parts:

1. Issues relating to fundraising that fall outside the scope of the statutory review, and
2. Review Questions and FIA Responses.

ISSUES RELATING TO FUNDRAISING

Recognition of the role of self-regulation

FIA recommends that the Review consider a greater role for self-regulation to maintain trust and confidence in charities by promoting best practice and ethical conduct in fundraising activity. This was envisaged in the 2010 Productivity Commission report into the *Contribution of the Not-for-Profit Sector*³ which led to the establishment of the ACNC but this was not included as part of the enabling legislation at the time.

This was a significant omission not only because it ignored the reference by the Productivity Commission to the value of both the FIA and ACFID codes in regulating behavior - something which legislation alone cannot achieve - but also because it was common practice for new Commonwealth regulators to be given powers in regard to self-regulatory codes as a way of reducing unnecessary red tape.

While the ACNC does not have the power to regulate fundraising activities, these are part of the 'trust and confidence' object in a general sense, therefore the Commission has sought to provide guidance in fundraising practice. This guidance has not always been welcomed by fundraisers and there is scope as envisaged by the Productivity Commission for closer co-operation between the ACNC and sector bodies including FIA in promoting good fundraising practice.

Relevant details of the FIA Code are included in the response to Review Question 2 in the second part of this submission.

³ www.pc.gov.au/inquiries/completed/not-for-profit

The ACNC is constrained in this regard because, unlike other government regulators such as the Australian Competition and Consumer Commission, the Australian Communications and Media Authority and the Office of Australian Privacy Commissioner, it does not have any authority to recognise and/or register codes of conduct. Nevertheless, as part of its 'supporter' object, the ACNC could work more closely with self-regulatory organisations including FIA, ACFID and PFRA to promote awareness of ethical standards contained in their respective codes.

FIA urges the Review Panel to consider whether this could best be achieved by regulation rather than specific legislative amendment to keep the regulatory burden to a minimum.

Reducing the regulatory burden

The ACNC conceded in its submission to this Review that its success in regard to reducing 'unnecessary regulatory obligations' has been limited. However as far as fundraising regulation is concerned the ACNC is to be commended for commissioning the *Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation* report from Deloitte (see footnote 12 on page 8).

The Deloitte report confirmed empirically what FIA members experience on a day-to-day basis: that state and territory fundraising provisions are the most onerous area of red tape for charities. As the first five years have shown reducing red tape cannot be achieved by the ACNC alone. As detailed elsewhere in this submission, this is not only a matter for the states and territories. The level of Commonwealth regulation is proliferating with the ACCC and ACMA having become directly involved in the past year.

Submissions to this Review support amendments to the Australian Consumer Law as a way to align fundraising regulation. Experience to date has shown that any new legislation, without a comprehensive agreement between all jurisdictions, will only produce more regulation, more time-consuming paperwork, and more complexity.

The ministerial council and its supporting committee of officials – Consumer Affairs Forum and Consumer Affairs Australia and New Zealand – charged with progressing harmonisation have manifestly shown themselves to be unequal to the task. They have achieved very little over the five years since the ACNC was established.

FIA submits that a recommendation of this Review should be to urge all governments to commit to a harmonisation effort.

FIA further submits that harmonisation of charity red tape including fundraising regulation should be put back onto the Council of Australian Governments (COAG) agenda with one of its objectives to secure agreement to consolidate the individual fundraising licensing and reporting requirements identified by the Deloitte report.

In addition COAG should establish a NFP Working Group tasked with addressing duplication of regulation. This Working Group should have appropriate sector representation which is notably lacking at present. The Group should replace the role of CAANZ which has failed to achieve any meaningful co-ordination or alignment over the last five years.

As an interim measure towards eliminating duplication the Review Panel should consider recommending development of the ACNC Charity Portal to be utilised as a 'One Stop' platform to register fundraising campaigns in compliance with all state and territory requirements thus eliminating the current need for multiple applications.

REVIEW QUESTIONS and FIA RESPONSES

1. Are the objects⁴ of the ACNC Act still contemporary?

FIA believes the objects of the ACNC Act remain contemporary however the Commission has had mixed results in its pursuit of these objects in its first five years.

Object 1: 'Trust and confidence'

The ACNC's own research suggests public trust and confidence in the sector has steadily declined in the past five years. "Since 2013, levels of trust and confidence in charities have decreased 13 percentage points. The level of trust in charities was 37% in 2013, 30% in 2015 and, 24% in 2017. Those who outright distrust charities (14%) has increased significantly from the 2015 research (10%)."⁵

⁴ The ACNC objects are:

- (a) to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- (b) to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- (c) to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

⁵ ACNC Public Trust and Confidence in Australian Charities 2017 p.2

In her recent report “Sustaining trust and confidence in Australian Charities”, Dr Tessa Boyd-Caine concluded: “Transparency and accountability are powerful tools in developing and maintaining public trust and confidence.”⁶ She urged the ACNC to make more widely available the trove of data it has amassed on charities and not-for-profits over the past five years and for the sector to use this data to “tell their stories”.

She cites the sector’s failure to address the “overhead myth”⁷ through transparency as a factor in the erosion of public trust and confidence.

“There is undoubtedly a disconnect between the cost of running charities and nonprofits effectively and the perceptions that expenditure on organisational capacity, rather than ‘frontline services’, is wasteful. But the answer is not to hide financial and other information from public scrutiny. Charities and nonprofits need to address these ideas directly, as part of the sector’s leadership of its own transparency and accountability.”⁸

FIA agrees with this approach and the new FIA Code contains the following commitments, compliance with which is subject to ongoing monitoring:

3.2 “Members will act openly, honestly and with regard to their responsibility for public trust.”

3.6 “Members will be open about the work they do, including how funds are raised, managed and disbursed.

The ACNC could support these sector-led efforts by affording them recognition through its various communications channels, including links from its web site.

FIA believes it is for individual charities to tell their own story about how effective they have been in pursuit of their mission. FIA does not agree with the proposition that the government regulator should seek to intermeditate between charities and their constituencies in the interest of transparency.

Object 2: ‘Support and Sustain’

As the ACNC has noted in its own submission⁹, there is a “...need to ensure that any activities it undertakes in pursuit of the second object are not inconsistent with its role as a regulator.” Given the challenge this presents, in FIA’s view the ACNC has done a creditable job of ‘walking the fine line’ between supporter and regulator.

Nevertheless, the tension between these two objects has been of some concern to the sector and it has not always been clear on what basis

⁶http://www.originfoundation.com.au/sites/default/files/ORI2414_FullbrightScholarReportScreen_02.pdf p.5

⁷ The common misconception that the percentage of charity’s expenses that go to administrative and fundraising costs – commonly referred to as ‘overhead’ – is an appropriate metric to evaluate when assessing a charity’s worthiness and efficiency.

⁸http://www.originfoundation.com.au/sites/default/files/ORI2414_FullbrightScholarReportScreen_02.pdf p.11

⁹ ACNC submission p22

(regulator or supporter) the ACNC has provided guidance, particularly regarding fundraising.

FIA strongly support amendments aimed at allowing the ACNC to collect and use information (including from other governments or agencies unless personal, confidential or without agreement) that enables a charity or the ACNC to better inform the public on how it is achieving its mission and delivering impact. However FIA would be opposed to the use of such information for the creation of league tables or other comparative benchmarks and tools intended to influence the decisions of prospective donors.

Object 3: Reduction of Regulatory Obligations

Over the past five years both the number of government agencies claiming a stake in fundraising and the level and inconsistency of fundraising regulation have increased significantly. This despite the policy aim, at the advent of the ACNC, to create a single regulator for the charitable and not-for-profit sector.

The ACNC has had some success in achieving a reduction in reporting requirements. However it is duplicative fundraising licensing and permit paperwork that the ACNC's own research¹⁰ has identified as the most onerous area for charities. Responsibility for this rests mainly with states and territories.

FIA suggests that, with the cooperation of the states and territories, there may be scope to expand the ACNC's Charity Passport program to make it a one-stop-shop for fundraising licensing and permits across all jurisdictions. For more detail on this matter, see FIA's response to Q8.

New Objects

FIA notes that in its submission to the Review, the ACNC has recommended that two new objects be added and that additional resources be allocated to the Commission to fulfil objects 2,3,4,5.

In FIA's view, there is a risk that the ACNC could lose its focus as an effective regulator for the sector if its objects become too broad and diverse. It is noteworthy that the much larger consumer and competition regulator the ACCC, by comparison, has just one purpose: "Making markets work for consumers, now and in the future." The securities regulator ASIC also has a single focus: "to allow markets to fund the economy and, in turn, economic growth". The Review should consider what the ACNC's core object is and encourage the Commission to focus its resources accordingly. For its part, FIA is supportive of a renewed focus on what it believes to be the ACNC's core object: promoting trust and confidence in charities.

¹⁰ <https://www2.deloitte.com/au/en/pages/economics/articles/cutting-red-tape-align-charity-regulation.html>

The ACNC has developed a comprehensive register of more than 55,000 organisations about which it is gathering an ever-increasing store of information. Its focus should remain on the core role of managing this data in a manner that will help the sector remain viable and become more effective, in the public interest.

2. Are there gaps in the current regulatory framework that prevent the objects of the Act being met?

FIA argues that it is inconsistency across the regulatory landscape, especially at the state and territory level, that inhibits the objects of the Act from being met. Thus, FIA would frame the problem in terms of a failure in harmonisation of regulation among all levels of government and arising from the proliferation of inconsistent or duplicative regulation especially at the state level. This needs to be addressed by the Council of Australian Governments (COAG) as a matter of priority.

In the short term, and as a means of generating momentum for harmonisation, there is a significant opportunity for the ACNC to play a leadership role in streamlining the processes for obtaining fundraising approvals for national campaigns on a “request once, use often” basis, leveraging the existing “report once, use often” platform it has developed through the Charity Passport program, which is available both to federal and state based government agencies.

FIA submits that a key recommendation of the current Review should be to urge all governments to commit to a harmonisation effort via the Charity Passport platform.

Sector sustainability and the role of self-regulation

In view of changing demographics and reduced government support to charities in areas such as health, disability, and overseas¹¹ aid, the environment facing fundraisers has changed significantly. In response, FIA has recently conducted a wide-ranging review of sustainability of donor support for charitable giving.

One outcome of the review has been a revised FIA Code. New measures adopted include special provisions relating to Australians in vulnerable circumstances¹². FIA members and their suppliers must respect the wishes and preferences of such donors and have been provided Guidelines and training in how to identify and deal appropriately with them.

¹¹ <http://theconversation.com/factcheck-what-are-the-facts-on-australias-foreign-aid-spending-71146>

¹² FIA members are mindful that many of the beneficiaries of charitable fundraising are people in vulnerable circumstances. Thus, these measures can be particularly effective for family members (or carers) of people suffering, for example, from Alzheimer’s or other health issues.

A new “Stewardship Principle” has been introduced whereby members are admonished to “assist donors to stop receiving solicitations”¹³ if asked. The intent of this clause is to encourage fundraisers to go further than minimum requirements in Australian privacy law in acting on a request to opt out of further solicitations.

Other innovations include expanded supply chain responsibilities, standards of conduct towards donors and beneficiaries, board level sign-off on adherence to the Code, compulsory Code training for fundraisers, and detailed Practice Notes to provide further best practice guidance to fundraisers.

Compliance with the new Code is monitored on an ongoing basis via ‘mystery shopping’¹⁴, as directed by the independent Code Authority. The Authority meets quarterly to review the results of the latest round of Code monitoring, to deal with any complaints or evidence of Code breach, and to commission further monitoring activity. It has the power to administer a range of sanctions against members for non-compliance, including public expulsion from FIA.

Under any future regulatory regime for the charitable and not for profit fundraising sector, FIA believes there will continue to be an important role for its Code to establish and promote an ethical framework that balances broader community interests, including those of charity beneficiaries who often lack a voice in policy debates.

3. Should the regulatory framework be extended beyond just registered charities to cover other classes of not-for-profits?

FIA supports the extension of the regulatory framework to include other not-for-profits, as recommended in the ACNC’s submission to the Review.

With the recent review of the Australian Consumer Law, FIA believes there is now greater clarity as to the application of the ACL to the not for profit sector and fundraising in particular. Guidance¹⁵ produced by the ACCC sets out general principles and examples to assist the sector in understanding its obligations under the ACL.

The list¹⁶ of regulators that may affect charities and not-for-profits is already very long. Other classes of not-for-profits are also covered by an array of regulation. One area of concern for professional fundraisers, however, is the largely unregulated activity of web-based, crowd-sourced fundraising.

¹³ FIA Code clause 4.3b

¹⁴ Mystery shopping is a tool used to measure quality of service, or compliance with regulation, or to gather specific information about products and services. The mystery shopper’s specific identity and purpose are generally not known by the organisation being evaluated.

¹⁵ <https://www.accc.gov.au/publications/guide-to-the-acl-for-charities-not-for-profits-fundraisers>

¹⁶ https://www.acnc.gov.au/ACNC/About_ACNC/Site_information/List_of_regulators/ACNC/Site/Regulator_list.aspx?hkey=ef91def1-25fd-42f0-a033-d3e95703a5e0

Crowd sourcing, unregistered, individual fundraisers

With the advent of new fundraising platforms such as crowd funding the landscape for fundraising is changing rapidly. The fact that much of this activity is happening in a relatively unregulated environment is considered disruptive, akin to the way Uber has impacted the taxi industry.

Charities are finding they are competing against individuals who have a crowd sourced funding page. Such platforms are not subject to the same level of regulation that charities face, if any at all. There is a greater risk of donors being duped or misled concerning the charitable purpose of the appeal, further eroding trust in the sector. Money being raised in this way might otherwise have been available to registered charities.

While ASIC has established a legislative framework¹⁷ for crowd funding in the context of financial services and markets, this has limited application to the NFP sector. The ACNC has also produced its own limited guidance, but without any regulatory backing.

Almost all crowd fundraising is conducted in the borderless, online environment, bringing the full array of state regulations into frame. FIA believes it is unlikely that all crowd fundraisers are meeting all their obligations in every state from which they are receiving support. This is yet another argument for a one-stop solution for licensing/permits.

4. What activities or behaviours by charities and not-for-profits have the greatest ability to erode public trust and confidence in the sector?

Charities unfairly criticised on overheads

FIA believes that charities often come under attack unfairly in the media over their administration (including fundraising) costs. This has impacted negatively on public trust. However the reality is that charities are, in the majority of cases, very efficiently run when compared to commercial organisations.

The ACNC could fulfil its role of supporting the sector by commissioning research on how charities compare with other sectors (e.g. retail, financial services, hospitality) in terms of return on investment. FIA is confident such research would demonstrate that charities as a whole are well-run and benchmark well against other sectors in terms of their stewardship of resources. This would help the sector defend itself against persistent and damaging criticism of its efficiency and help shift the media focus to the social benefits that accrue from supporting the sector.

¹⁷ <http://asic.gov.au/regulatory-resources/financial-services/crowd-sourced-funding/>

Need to reduce duplication of effort

There is concern about the costs of multiple charities pursuing essentially the same cause. The costs involved in setting up a not for profit may be substantial. So-called 'back end costs' such as processing departments and database administration could be shared if there was greater incentive to do so. However, charities have found this is not easy to achieve in practice. Often it is not the management team that resists; it is founders and boards who refuse to give up their objectives in order to amalgamate.

Too many small, new charities with similar aims

There is a tendency for people to set up their own charity rather than look to ones that already exist and support work already underway. Such people should be encouraged to look for like-minded organisations and see if there are ways to share resources, particularly administrative costs, so that overheads can be minimised. This responsibility to deliver the best outcomes for beneficiaries means being less protectionist about one's own stake and being more collaborative, which is what donors expect.

Many newer registrants lack a thorough understanding of the significant governance obligations they face. They also lack professional fundraising skills. This can quickly lead them into trouble. Typically it is the ones that are run out of someone's home that do not have enough structure behind them to meet their compliance obligations. There is a misconception among some new entrants to the sector that fundraising is 'easy'. They assume it can be done effectively on top of someone's day job, or without paid staff.

The ACNC could be doing more to encourage charities with similar aims to merge or at least share resources.

Reputational damage to the sector from deregistration

In 2017 the ACNC recorded a 30 per cent increase in the number of charity revocations.¹⁸ Some 780 charities had their registration revoked for failing to submit their AIS for two consecutive years¹⁹ and a further 26 were revoked after investigation.

Often the news media have seized on this enforcement activity to write negative stories about the sector. When the ACNC deregisters and names a charity, without disclosing the reason for the action, the media assume the worst and it reflects badly (and very publicly) on the whole sector.

FIA supports the ACNC's recommendation in its submission to the Review, to provide more information about the reasons for revocation in the interest of addressing the inaccurate perception that large numbers of registered charities are being mismanaged or not stewarding funds appropriately.

¹⁸ <https://probonoaustralia.com.au/news/2018/01/charity-revocations-become-norm/>

¹⁹ ACNC Submission to the Review p.20

5. Is there sufficient transparency to inform the ACNC and the public more broadly that funds are being used for the purpose they are being given?

Administration and Transparency

It is generally accepted that administration costs alone are an unreliable indicator of the extent to which donations make a difference. Some charities that make a real impact may have relatively high administrative costs, whereas others may be less effective but have low costs. This presents a distorted picture to the prospective donor who makes their choice based on the metric of costs alone.

The distortion is made still worse when a charity uses a major sponsor and/or benefactor to defray its costs then, in its promotional materials, claims that “all donations go directly to mission”. Such claims are expressly banned under the FIA Code, and FIA was pleased to note that the ACCC in its recent Guide to the ACL for Charities NFPs and Fundraisers²⁰ also cautioned against making such claims on the grounds they could be misleading under the Consumer Law.

Misconceptions about administration costs and the use of arbitrary measures of ‘efficiency’ can lead to unfair assessments of a charity’s effectiveness. The ACNC has been a strong advocate of the view that charities should be measured on their impact and effectiveness, not simply on their administration costs. FIA strongly endorses this position.

In 2010, the Coalition of Australian Governments agreed to adopt the Chart of Accounts for Not for Profits developed by Queensland University of Technology as the government standard, a measure supported by FIA. While this measure means there is now a recognised standard for accounting for charities and not for profits, it does not assist with harmonising state government requirements concerning the cost of fundraising. NSW legislation limits the cost of fundraising for a charitable event to 50 percent of the gross proceeds of the event. In contrast, Victorian legislation refers only to “reasonable” costs without specifying any measurable amount. Most other states do not address the cost of fundraising in legislation.

FIA’s long held view is that the cost of fundraising ratio is just one of several indicators that not-for-profit organisations may wish to use for reasons relating to managing their internal systems and costs or for sector specific benchmarking exercises that may be conducted occasionally by fundraising practitioners.

FIA remains opposed to any specific percentage or cost of fundraising ratio being included in regulations that apply across all organisations, as these do

²⁰ <https://www.accc.gov.au/publications/guide-to-the-acl-for-charities-not-for-profits-fundraisers>

not take into account the linear nature of campaigns and therefore would be inequitable and even misleading. Any regulation on the cost of fundraising should be limited to requiring that a range of information that may be useful and relevant to donors and other stakeholders (e.g. mission and goals, governance structures, fundraising activities, programs and program evaluations) be made available by not-for-profit organisations.

FIA has recently published Guidelines on Measuring and Reporting Fundraising Costs along with a simple ROI calculator for use by charities and NFPs to measure and assess fundraising costs. The ACNC should encourage all registered charities to use these tools (available free on the FIA website) to improve transparency with donors and sector observers. In this way, the community can have greater confidence in the social impact and effectiveness of donated funds.

FIA submits that greater transparency and accountability for charities and NFPs could be better achieved by providing greater focus on self-regulation particularly in relation to fundraising. This was envisaged by the Productivity Commission in its landmark 2010 Report Regulation of the Not-for-Profit Sector but not carried through as part of the ACNC's remit. The Report²¹ stated: Self-regulation has a vital and valuable role in reducing the burden of regulation and making it more tailored to relevant parts of the NFP sector.

The ACNC should be encouraged to work more closely and collaboratively with sector bodies administering self-regulatory codes to achieve the aims of greater transparency and accountability.

6. Have the risks of misconduct by charities and not-for-profits, or those that work with them, been appropriately addressed by the ACNC legislation and the establishment of the ACNC?

A significant limitation on the ACNC's ability to address misconduct by charities and NFPs is that its powers relate only to Federally Regulated Entities.

It is noteworthy that, when evidence emerged of misuse of funds by certain individuals in senior management roles with the Returned and Services League (NSW branch), the NSW Government concluded it needed more powers under its Charitable Fundraising Act to deal with such matters and amended the Act accordingly.

7. Are the powers of the ACNC Commissioner the right powers to address the risk of misconduct by charities and not-for-profits, or those that work with them, so as to maintain the public's trust and

²¹ <http://apo.org.au/system/files/19360/apo-nid19360-69416.pdf>

confidence? Is greater transparency required and would additional powers be appropriate?

Yes, the powers of the ACNC Commissioner are the right powers to address the risk of misconduct by charities and not-for-profits. Re transparency, see response to Q.5.

FIA does not support a new object for the ACNC in relation to promoting more effective use of resources through enhanced accountability to donors. Research²² shows that donors give because they are aligned with the charity's mission, or that donating gives status, especially in the case of high income earners.

FIA believes it is for individual charities to explain their effectiveness in pursuit of their mission. FIA does not agree with the proposition that the government regulator should seek to intermeditate between charities and their donors with the aim of driving an efficiency agenda. Given the broad diversity of charitable causes, funding models and formulas, FIA does not believe it is possible to develop a simple, accurate and fair mechanism for providing donors information that will enable them to make choices based on arbitrary measures of efficiency.

8. Has the ACNC legislation been successful in reducing any duplicative reporting burden on charities? What opportunities exist to further reduce regulatory burden?

While there has been some progress recently in reducing duplicative reporting, by far the greatest source of red tape for charities relates to permits to fundraise which must be sourced state by state, campaign by campaign. In the past five years, there has been little progress towards eliminating duplication or reducing these administrative costs, which are outside the ACNC's remit.

A February 2016 Report by Deloitte Access Economics commissioned by the ACNC concluded: "Overwhelmingly, fundraising is the source of the greatest amount of regulatory burden for charitable organisations. Fundraising legislation differs significantly between jurisdictions which very quickly escalates the administrative costs a charity incurs."²³

²² Dr W Scaife et al, Foundations for Giving, The Australian Centre for Philanthropy, UT, Feb 2012)

²³ <http://www.acnc.gov.au/ACNC/ACNC/Publications/Reports/CuttingRedTape.aspx>

In her recent Report²⁴ of the New South Wales Inquiry under the *Charitable Fundraising Act 1991* into the Returned and Services League of Australia (RSL NSW Branch), Justice Bergin concluded: “Each charitable fundraiser is governed by many different and overlapping provisions in the Act, the Regulations and the standard and particular conditions of their fundraising authority. There is the real prospect, as happened with each of the entities in this Inquiry, that fundraisers may lack familiarity or clear understanding of the detail of the statutory regime. It is therefore recommended that consideration be given to some simplification of the regime by removing the duplication and overlapping provisions and consolidating them into one place, preferably the conditions of the fundraising authorities that are granted, with the Act providing the key provisions.”

The promise of harmonisation has not been delivered; in fact, the opposite is happening as different jurisdictions respond to perceived regulatory gaps in different ways and at different times.

- The ACT is the only jurisdiction to actually reduce fundraising-specific red tape while NSW has taken the opposite direction, legislating for new inquiry powers to impose serious penalties under its charities law²⁵. This is significant for the many FIA members who treat NSW and the ACT as a single entity for purposes of fundraising campaigns. This reversal comes less than two years since the same NSW government proposed to repeal its charities legislation.
- Like NSW, Queensland considered repealing its fundraising-specific legislation but has ended up increasing not decreasing fundraising red tape by tightening licensing requirements around face to face donor appeals and requiring the sector to undertake new disclosure measures.
- Victoria, South Australia and Tasmania have taken small steps towards aligning their annual reporting requirements with those of the ACNC but these measures have little or no impact on fundraising, which is still subject to campaign by campaign, jurisdiction by jurisdiction application forms, licensing and other paperwork.

Meanwhile, at the federal regulatory level fundraising specifically is now being targeted by:

- The Australian Competition and Consumer Commission (ACCC) in two new areas; commissions for new donor acquisition, and new “Guidance” under the Australian Consumer Law.
- The Australian Communications and Media Authority (ACMA) has identified charitable fundraising as a 'priority' area for investigation, and is considering possible changes to administration of the Do Not Call Register and similar regulated functions while under pressure from consumer advocates to remove the charity exemption to the DNC.

²⁴<https://www.finance.nsw.gov.au/inquiry-under-charitable-fundraising-act-1991> (Report paragraph 13.2.28).

²⁵ <https://legislation.nsw.gov.au/#/view/act/2017/36>

- The Fair Work Ombudsman has ongoing industrial relations investigations in regard to face to face fundraising which has been accompanied by related trade union activity and court actions.
- The Treasury Department is investigating whether DGR administration should be rolled into the ACNC's remit²⁶.
- The ACNC has been expanding its involvement with fundraising issues, issuing Guidance documents in areas such as privacy law²⁷, vulnerable people, crowdfunding²⁸ and "raising money"²⁹.
- The Electoral Amendment (Banning Foreign Political Donations) Bill 2017³⁰ and the Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2017³¹ have swept charitable fundraising into their net, although charities are not considered to be the intended targets of the reform.

The end result of these developments is that there has been a significant increase both in the absolute quantum of regulation and the actual number of regulators with whom charities and not-for-profits have to deal. Ironically, the promised harmony has produced disharmony and the level of inconsistency is increasing.

The Review should call upon COAG to establish an NFP Working Group with appropriate sector representation, tasked with aligning and co-ordinating fundraising and other NFP regulation reform in advance of any further unilateral legislative change by any jurisdiction.

9. Has the ACNC legislation and efforts of the ACNC over the first five years struck the right balance between supporting charities to do the right thing and deterring or dealing with misconduct?

Yes

End of Submission

²⁶ <https://treasury.gov.au/consultation/tax-deductible-gift-recipient-reform-opportunities/>

²⁷ http://www.acnc.gov.au/ACNC/FTS/Managing_peoples_information_and_data_.aspx

²⁸ <http://www.acnc.gov.au/ACNC/Edu/Crowdfunding.aspx>

²⁹ http://www.acnc.gov.au/ACNC/Publications/Charity_money/Managing-charity-money_-_Raising_money.aspx

³⁰ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5937

³¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5808

Appendix 1.

Fundraising Institute Australia Code – 1 July 2017

About FIA

Fundraising Institute Australia (FIA) is the largest representative body for the \$12.5 billion Fundraising sector. Members include charities and other not-for-profits operating domestically and internationally, as well as Suppliers and professionals who provide services and support to the sector. FIA advocates for the interests of the sector, administers the system of self-regulation including the Code, educates Fundraising practitioners, promotes research and creates forums for the exchange of knowledge.

Preface

The FIA Code is a voluntary, self-regulatory code of conduct for fundraising in Australia. It aims to raise standards of conduct across the sector by going beyond the requirements of government regulation. Its content is informed by the International Statement of Ethical Principles in Fundraising.

About the Code

- 1.1. The Code applies to FIA Members.
- 1.2. The Code commits Members to high standards of ethical conduct.
- 1.3. The Code is self-regulatory and does not replace or override any law.
- 1.4. Adherence to the Code is a requirement of FIA membership.

Compliance

- 2.1 Members will comply with all Federal, State and Municipal laws and regulations applicable to Fundraising.
- 2.2 At least one board member, on behalf of the board of directors, or the chief executive of the Member, will sign off annually on the Member's adherence to the Code.
- 2.3 Members will ensure that those engaged in Fundraising activities have completed FIA Code training within six months of their appointment.
- 2.4 Members agree to accept the decision of the Code Authority in respect of any complaint brought against them under the Code.
- 2.5 Members agree to have their adherence to the Code monitored by FIA.

Ethical conduct

- 1.5. Members will not engage in activities that bring Fundraising into disrepute.

- 1.6. Members will act openly, honestly and with regard to their responsibility for public trust.
- 1.7. Members will act with respect for professional Fundraising, the Cause they represent, Donors and Beneficiaries.
- 1.8. Members will not exploit relationships with Donors.
- 1.9. Members will conduct themselves in a manner that encourages others to aspire to the same high standards, valuing privacy, confidentiality, trust and integrity.
- 1.10. Members will be open about the work they do, including how funds are raised, managed and disbursed.

Conduct towards Donors

- 4.1 Members will promptly and courteously comply with a Donor's:
 - a) refusal to make a Donation;
 - b) request to not receive any future solicitations;
 - c) request to be contacted at a more convenient time or by a different method; and
 - d) request to limit the number, type or frequency of solicitations.
- 4.2 Members will, each time they contact a prospective Donor, provide information about how the prospective Donor can opt-out of receiving any further solicitations from the Member.
- 4.3 Members will, if asked:
 - a) provide the contact details of the Cause on whose behalf the Member is fundraising;
 - b) assist donors to stop receiving solicitations;
 - c) provide information about how the Donor's contact details were obtained; and
 - d) provide information about how to make a complaint or the name and contact details of the person who is responsible for handling complaints.
- 4.4 Members will make readily available, on request, information about the Cause for which they are Fundraising, including:
 - a) its objects and how it intends to use the Donated funds;
 - b) its capacity to use Donations effectively for their intended purposes;
 - c) its most recent annual report and/or financial statements;
 - d) its governing Board; and
 - e) whether funds are being raised by volunteers, employees or Suppliers.
- 4.5 Members will ensure that appropriate security measures are in place to protect Donor information at all times.
- 4.6 Members will have a clear policy on acceptance or refusal of Donations.
- 4.7 Members will not accept a Donation where:
 - a) they have a reasonable belief that the Donor is in vulnerable circumstances or lacks capacity to make a decision to Donate; or

b) to do so would compromise the interests or objects of the Cause on whose behalf the Member is Fundraising.

4.8 Members may choose not to accept a Donation where:

- a) the activities of the Donor are incompatible with the objects of the Cause on whose behalf the Member is Fundraising;
- b) the cost of accepting the Donation will be greater than the value of the Donation; or
- c) there is reason to believe that accepting the donation may give rise to litigation.

4.9 Members may accept a Donation for a specific activity provided that the activity is:

- a) directly related to the objects of the Cause for which the Member is Fundraising; and
- b) practically achievable by the Cause.

4.10 Members will:

- a) not subject Donors to undue influence, harassment, intimidation or coercion;
- b) maintain an appropriate professional relationship with the Donor in connection with any Donation or Bequest;
- c) not prevent or discourage a Donor from seeking independent legal advice in relation to a Donation;
- d) not prevent or discourage a Donor from having a family member or other trusted advisor present when considering a Donation; and
- e) not, after obtaining a Donation, change the conditions of the Donation without first communicating with the Donor any changes and gaining their consent for the change.

4.11 Members will ensure their promotional materials:

- a) are not false, misleading or likely to deceive;
- b) do not claim or imply that professional fundraising activities are carried out at no cost;
- c) are not knowingly sent to a Child without the consent of the Child's parent or guardian;
- d) do not contain depictions that are demeaning, discriminatory, pornographic or unduly violent towards a person or group.
- e) do not disparage others; and
- f) do not infringe on the intellectual property rights of others.

- 4.12 Members will ensure a Donor has given consent prior to any public recognition of their Donation.

5. Conduct towards Beneficiaries

- 5.1 Members will not engage in conduct that threatens the dignity of, or disparages a Beneficiary. Such conduct may include, but is not limited to:
- a) commenting unnecessarily or negatively on the impairment, dependency or disability of a Beneficiary;
 - b) using language which suggests that the Beneficiary is to be pitied or feared;
 - c) using Children in promotional materials to raise funds for adult causes, giving the impression that the Beneficiaries are childlike;
 - d) stating or implying a falsehood regarding a Beneficiary; or
 - e) using a Beneficiary's image, name or other personal information without their permission.

6. Conduct in Supplier relationships

- 6.1 Members will have written contracts with all relevant parties in their Supply Chain that specify the responsibilities of all parties and meet the requirements of applicable laws and regulations.
- 6.2 Members will ensure that all relevant parties in their Supply Chain are aware of the Member's obligations under the Code and do not act in ways that could result in the Member being in breach of the Code.
- 6.3 Members will ensure that Supplier costs incurred in fundraising are proportionate to the funds raised and represent fair market value for services provided.

7. Administration and enforcement

- 7.1 Compliance with the Code will be monitored and enforced by the Code Authority.
- 7.2 Alleged breaches of the Code will be referred to the Code Authority.

8. Definitions

Beneficiary	means the recipient of a benefit as a result of fundraising for a Cause.
Bequest	means a gift of any asset or right given in a Donor's will and includes a legacy.
CEO	means the CEO of Fundraising Institute Australia
Cause	means a purpose such as advancing health, education, social or public welfare, religion, culture; promoting reconciliation, mutual respect and tolerance between groups of individuals; promoting or protecting human rights; advancing the security or safety of the public; preventing or relieving the suffering of animals; advancing the natural environment; promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state,

	a territory or another country, and other not-for-profit purposes 'beneficial to the general public'.
Code Authority	means a committee established by the FIA Board pursuant to the FIA constitution for the purposes of deciding on matters related to the Code.
Code	means the document that commits FIA Members to high standards of ethical conduct.
Children	means people under the age of 18.
Complaint	means a notice in writing sent by any person to FIA, by way of a completed complaint form, concerning an alleged breach by an FIA Member of any part of the Code.
Donation	means a voluntary contribution or Bequest of money, property, goods or services to a Cause for the purpose of furthering its objects.
Donor	means an individual or their legal representative (in the case of a deceased person's Bequest) or other entity that makes a donation to a Cause.
FIA	means Fundraising Institute Australia.
Fundraising	means the act of seeking and obtaining Donations on behalf of a Cause.
Member	means and includes both individual and organisational Members of FIA.
Supplier	means a third party supplying goods or services to a Member for payment. A Supplier may also be a Member of FIA.
Supply Chain	means the system of organisations, people, activities, information, and resources involved in delivering a product or service from supplier to client