

5 April 2012

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

Dear Sir / Madam

## **Charitable Fundraising Regulation Reform**

We are pleased to offer comments on the discussion paper on *Charitable Fundraising Regulation Reform*.

### Introduction

The Financial Services Council represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees.

The Council has over 130 members who are responsible for investing more than \$1.8 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Former private Licensed Trustee Company and Public Trustee members of the TCA now comprise the Trustee Services Board Committee (TSBC) within the FSC.

The TSBC has responsibility for developing the FSC's strategies and policies in relation to traditional trustee company services, which include estate planning, wills, powers of attorney, deceased estate administration, and management of various types of personal trusts.

Within the trusts sector of their businesses, TSBC members act as trustee or co-trustee for over 2,100 charitable trusts or foundations with assets of around \$3.2b.

In 2009/10, members distributed about \$175m to charitable causes from those trusts or directly from deceased estates that they administered.

## Comments

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

We believe that specific charitable fundraising regulation is necessary in order to promote public confidence in the sector.

We do not feel that registration of charities is, in itself, sufficient and that there need to be appropriate controls on how they raise funds and adequate transparency about those activities.

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.

Some of our members operate Public Ancillary Funds (PuAFs), and are required to complete an Annual Return by Fundraiser for each state in which they may have sub-funds. This is inefficient, particularly as the information sought by the various state bodies issuing the fundraiser licences differs between jurisdictions.

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?

No comment.

2.4 Should the following activities – soliciting government grants; corporate donations or donations from public and private ancillary funds; workplace appeals for colleagues; donations to religious organisations from their own members; and, lotteries and raffles regulated under State or Territory law - be exempted from fundraising regulation?

We agree that those activities should be exempted from national fundraising regulation on the basis that they do not raise significant concerns or that they are adequately regulated under regional law.

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.

We suggest that contributions into private ancillary funds (PAFs) and into charitable trusts which do not solicit public money, eg: testamentary charitable trusts, should also be exempt on the basis that they are 'accumulation' vehicles and do not raise concerns.

Further, the same arguments could be seen to apply to PuAFs.

These are charitable accounts established in a name nominated by the contributor but operated under an umbrella facility for more efficient administration, accounting, governance and auditing.

Accounts in PuAFs generally are established by sophisticated philanthropists and involve relatively large sums.

There is usually no solicitation by PuAFS, such as door knocking, telephone calls or approaches in public places. Rather, information is disseminated by website, Facebook, functions, other professionals and newspaper articles.

Also, trustee corporations which administer PuAFs are already well regulated by ASIC or State/Territory governments.

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.

Yes.

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

We agree that national fundraising regulation should be limited to large amounts and believe that an annual figure of \$50,000 would represent a reasonable trade-off between minimising compliance costs on charities and ensuring appropriate regulation/ disclosure.

2.8 Should existing State or Territory fundraising legislation continue to apply to smaller entities that engage in fundraising activities that are below the proposed monetary threshold?

No. We believe that unwinding State/Territory collections legislation as part of the move to national regulation of fundraising would offer efficiency gains without threatening public confidence in the sector.

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?

A transition period of 1 year would be reasonable.

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?

We agree that there would be advantages in terms of efficiency and reduced compliance costs if all charities registered with the ACNC are also authorised to engage in fundraising activities across Australia.

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

No.

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

We agree that circumstances such as insolvency or significant wrongdoing in the course of fundraising would warrant the ACNC banning a charity from fundraising activities for a period commensurate with the severity of the infraction.

We also agree that any such decision by the ACNC should be reviewable by the Courts.

3.1 Should the following provisions of the ACL – misleading and deceptive conduct; unconscionable conduct; false and misleading representation; and, harassment and coercion - apply to the fundraising activities of charities?

We agree that it would be appropriate for those provisions to apply as they would involve minimal compliance burden.

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

We suggest that the following calling hours would be reasonable:

- Monday – Friday: 9am – 5pm
- Saturday: 10am – 4pm
- Sunday/public holiday: none

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?

We believe that unsolicited selling warrants appropriate control under the ACL.

4.1 Should all charities be required to state their ABN on all public documents? Are there any exceptions that should apply?

We are unaware of any strong reason why charities should not provide their ABN on public documents.

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?

In the interests of promoting confidence in the sector, persons engaged in charitable fundraising activities should be required to provide information about whether they are 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?

Yes.

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

No comment.

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

Yes.

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

No comment.

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

It would be appropriate for charities to provide contact details of the ACNC and a link to the ACNC website, on their public documents (ie: similar to financial service entities providing EDRS information in their PDS).

However, a phase-in period should be allowed to minimise the cost of compliance.

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

We agree that, because donors as well as the general public have a legitimate interest in the outcome of fundraising campaigns, it would be useful if reports to the ACNC contained qualitative elements, such as a description of the beneficiaries and outcomes achieved.

However, this provision need only apply to charitable organisations (sometimes referred to as 'doing' DGRs), which actually deliver goods and services to beneficiaries, rather than to 'accumulation' vehicles, such as private and public ancillary funds, which distribute funds to those charitable organisations.

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?

Yes – in the interests of transparency and accountability.

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

No comment.

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

No comment.

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

Yes.

6.2 Should charities conducting internet or electronic fundraising be required to state their ABN on all communications? Could this requirement be impractical in some circumstances?

Yes.

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

No comment.

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

We agree that third parties that raise funds on behalf of a charity in return for a direct financial or other benefit should be subject to appropriate regulation as there is likely to be a greater possibility for aggressive or misleading behaviour, with adverse consequences for public confidence in the sector.

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

Yes – see answer to Q7.1.

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?

Yes, as this would facilitate the ACNC taking action directly against a third party fundraiser that breaches fundraising laws.

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

Yes.

7.5 Should third party fundraisers be required to disclose that they are collecting donations on behalf of a charity and the fees that they are paid for their services?

Yes.

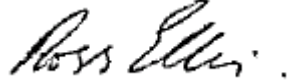
7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?

Yes.

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

We agree that the involvement of private participators is likely to present less chance of undesirable conduct given the potential reputational damage to those entities if they engage in inappropriate conduct.

Yours sincerely

A handwritten signature in black ink that reads "Ross Ellis". The signature is written in a cursive style with a period at the end.

Ross Ellis  
Trustee Services Consultant