



A Good Beginning
for Every Child

Charitable Fundraising Regulation Reform

Good Beginnings Australia Comments

Submission: 5 April 2012



Australian Government, Treasury: Charitable Fundraising Regulation Reform

DISCUSSION QUESTIONS

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

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

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GOOD BEGINNINGS AUSTRALIA COMMENTS

Context

Good Beginnings is a national small/medium size charity that provides early intervention and parenting support programs across every State and Territory in Australia. The feedback that has been provided stems from a fundamental support of the Not-For-Profit (NFP) Sector reform and reduction in red tape. It is widely recognised that there are and will be stages to the implementation of reform and Good Beginnings is most keen to play a part in progressing the small/medium organization engagement in implementation. In particular Good Beginnings can provide a unique view due to its national positioning and understanding of the challenges at each State and Territory level.

As is consistent with regulation in many areas across Australia, the impost of varying regulations at a state level is felt most keenly by small to medium organisations that don't have the capacity of larger ones to absorb varying standards. Good Beginnings considers that these responses propose a level of regulation that can provide the public with confidence in the operation of a charity, while not imposing unnecessary 'red tape' on the smaller organisations that can least afford it. This 'red tape' takes resources away from the key outcomes that the charity is working towards.

This consultation paper provides feedback on the charitable fundraising regulation environment and its impact on NFP's.

Discussion Question Feedback

Is regulation necessary?

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?

2.1: Regulation is necessary to promote public confidence and to deter bad actors in charitable fundraising. However, the current state of affairs with differential fundraising regulations in each State and Territory is highly dissatisfactory, as it imposes a high burden of 'red tape' on charities operating nationally. There is no sound reason why a national charity should need to register separately in each State & Territory, and follow different regulations in each jurisdiction. Regulatory burden ranges from the very high (for example, NSW and SA regulations) to the almost non-existent (NT).

From Good Beginnings' view there could be two potential approaches to managing this 'red tape':

- a) Nationally harmonized registration and regulation (harmonized across each state as is intended with legislation such as Food Safety or Workplace Health and Safety); or
- b) States recognise the licencing and regulation managed by the state in which the NFP is incorporated. While this is likely to cause varying standards in the short term, it is anticipated that public accountability expectations will place pressure towards greater standards in all states in the longer term.

Both of these options have some administrative or regulatory challenges that could be avoided through a national regulator; however it is recognised that this is likely to be a longer term solution in implementing.

2.2: Requirements to register and/or comply with differential fundraising regulations in each State and Territory imposes back office administrative and processing burdens, with variable reporting requirements to each regulator. Conservatively, with 8 jurisdictions, of which 7 have specific regulatory requirements in relation to registration, the regulatory burden is 7 times higher than it would be under nationally harmonized registration and regulations.

A practical example of this the reporting of fundraising activity, which has to be reported to separate regulators, and in one instance, required Good Beginnings' auditor to sign a

declaration (in addition to signing off on the annual accounts submitted to ASIC) that the fundraising information was correct.

2.3: Good Beginnings is not aware of any evidence that demonstrates the impact of existing fundraising regulation on public confidence and participation. Greater transparency and public monitoring is a sound goal to work towards. Good Beginnings would be cautious in supporting any prescriptive reporting, or any reporting that relied solely on statistics without the opportunity to provide supporting commentary to enable full explanation of the background information. The background information is an important component of public transparency that enables the public to understand the drivers behind any movement in statistics, particularly ones driven by arbitrary timeframes such as financial years.

Defining fundraising activities that are to be regulated

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.

2.4: Good Beginnings supports the exemption of these activities (soliciting for government grants, corporate donations, workplace appeals for colleagues and donations to religious organisations by members) from fundraising regulations, as they are of a nature less prone to abuse by bad actors. Extensive regulation in this space may have the unintended effect of deterring philanthropic activity and the growing field of workplace giving.

2.5: Soliciting for 'Philanthropic' grants – that is, grants from Trusts & Foundations of any kind, should be specifically mentioned as exempt. This falls under the same rationale as the exemption for Government grants, i.e. that those organisations can require information and regular reporting on the outcomes from funding provided to charities as a condition of the grant.

Implementing a national approach

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?

2.6: Yes, the effect is disproportionate due to the less sophisticated acquisition and donor tracking systems of smaller charities. The cost of donor tracking and administrative processes is lower for larger charities as a percentage of funds raised.

It is also disproportionate for smaller charities that operate in more than one state, creating a significant administrative overhead, without the scale to naturally absorb the additional work. For example, a larger organisation may have an individual responsible for fundraising and compliance in each state, and they therefore can become familiar with the specific regulation in some detail. A smaller organisation may have one person responsible for all states (and potentially other tasks), requiring a greater complexity of knowledge in the role.

2.7: The proposed threshold of \$50,000 is not appropriate in the view of Good Beginnings, primarily because if an organization is national but has donations of less than \$50,000 per annum, it appears that it would then still be required to comply with differential regulations across the States & Territories. This defeats the purpose of national regulation which is actually of greater benefit to smaller organisations. For this reason, there should not be a threshold or the threshold should be set very low so as to ensure that only local or State-based organisations are exempted from national regulation. Good Beginnings would propose that opt-in to the national regulations automatically exempts an organization from differences in State regulations if they exist, in favour of the national regulations.

2.8: Possibly, but not if the entity 'opts in' to the national regulations. An opt-in mechanism should be permitted to promote the harmonization of regulations and national consistency.

2.9: A transition grace period of 12 months should apply to allow time for complex fundraising systems to be adapted and any new processes or harmonized processes implemented. However, the national regulations should apply only if all States & Territories have adopted the new national framework. If this is not the case, charities will face yet more 'red tape'.

Registering for fundraising activities

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?

2.10: Good Beginnings supports the notion that the ACNC should act as the body authorizing charitable fundraising by charities across all jurisdictions. Any requirement to separately register with state regulators should be avoided, in order to reduce the compliance burden with its associated costs.

2.11: Yes, this is a key reform to streamline processes and reduce the compliance burden.

2.12: No, based on the principle that the definition of a charity will be clarified by the ACNC and that charities will only be registered if they satisfy this test.

2.13: Conduct that is misleading or deceptive within the definition of Australian Consumer Law (ACL, Consumer & Competition Act 2010) and has resulted in a conviction or successful civil action should result in a review of a charities' authority to fundraise. Insolvency should result in an automatic suspension of the authority to fundraise. The period of any ban from fundraising should be determined by addressing the facts of a specific case rather than a blanket rule, given the potential impact of a ban on the viability of an entire charitable organisation and its stakeholders. To this end, a convening panel might be required within the ACNC with the authority to conduct hearings on such matters.

Application of consumer protection laws to charitable fundraising

Consultation question:

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

3.1: Good Beginnings supports the application of ACL provisions to fundraising activities, in line with adopting principles-based national regulations, rather than detailed activity-based regulations that are unlikely to cover every possible current or future circumstance.

Charitable fundraising and calling hours

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?

3.2: The calling hours proposed are supported by Good Beginnings, however in the interests of harmonization, any final regulation in relation to calling hours should be consistent with similar regulations regarding telemarketing.

Charitable fundraising and unsolicited selling provisions of the ACL

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?

3.3: Charities have certain exemptions under both the SPAM ACT (Cth) and the Do Not Call Register Act 2006 (Cth). Therefore unsolicited selling provisions of the ACL should not automatically apply to charities, on the same principle that it is not in the interests of the community to impede the ability of charities to fundraise for causes without significant 'red tape' and high compliance costs. However, it may be suitable for unsolicited selling provisions to be applicable in the instance of written agreements governing recurrent donations which are made as the result of unsolicited selling in certain cases (such as door to door selling).

Information disclosure at the time of giving

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?

4.1: Good Beginnings supports the disclosure of an ABN on all documents that related to charitable fundraising.

4.2: Regulations currently stipulate a ratio of costs in fundraising that are acceptable. Therefore a requirement to disclose whether a collector is paid appears excessive in scope and potentially undermines public confidence for no gain, due to inaccurate perceptions of fundraising (for example, that it can be achieved at almost no cost or should not incur costs). However, other basic details should be provided when a paid collector is used – such as the name of the charity.

4.3: Yes, these details should be provided in face-to-face fundraising.

4.4: The requirement should be to clearly identify the charity including an acceptable method of contact (which could be a web address, for example).

4.5: This disclosure does not necessarily reduce confusion with the general public given that certain types of cash donations are exempt from the need to provide a tax-deductible receipt, despite being tax deductible in nature – for example, coin collection boxes/devices. Therefore this proposal should be treated with caution as it may not be entirely practical in implementation.

4.6: If information is available through the ACNC portal, no additional information should be required at the time of donation. The exception to this is for recurring donations, which

should incorporate a cooling-off period – the timeline and process for doing this should be included. Care should be taken to ensure that any requirements regarding cooling-off are consistent with other contract laws.

4.7: The principle of providing information about the ACNC is sound however consideration should be given to the amount of information that might be provided. Extensive information is likely to have the counter-effect of appearing as extra fine print rather than clear information. It is suggested that the charities ABN and a reference to the ACNC website is sufficient information on documents (especially tax invoices).

Information disclosure after the time of giving

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?

5.1: This proposed requirement is extremely impractical and should not proceed. Charities will often pool charitable donations for a variety of uses. The definition of whether funds are directly expended on beneficiaries or used to support functions which benefit beneficiaries is never black and white. Furthermore, reporting on outcomes would require complex, time-consuming, and costly reporting tracking that is simply not feasible, particularly for smaller charities, where it would impose a high regulatory burden that would consume a not-insignificant percentage of funds raised.

It should be considered that the definition of ‘outcomes’ itself is not an area of easy agreement within the sector, and it is unlikely the ACNC would be charged with sufficient resources itself to be in a position to assess such reporting.

However, what should be required, and in line with the ACL provisions on misleading and deceptive conduct, is that where charities do in fact decide to disclose specific beneficiaries, that this is in fact true. This again conforms with broad principles-based regulation, rather than inappropriately detailed regulation that imposes unnecessary regulatory burdens.

5.2: See response to 5.1, which overlaps with this question. Further to 5.1, costs associated with raising funds should be reported to the ACNC, provided this is in line with existing requirements, for example under NSW regulations (incorporated to Annual Financial Statements), and can be made within existing Audited Annual Financial Statements. In this manner, only a copy of the organisation's Annual Report need be provided to the ACNC each year, rather than imposing an additional reporting requirement.

Caution should also be applied in breaking down fundraising activities on a case by case basis. For example an 'open-day' may raise a certain level of funds on the day, but also raise awareness about the charity. This then may lead to donations at a future point in time that cannot be recognised against the expenses of that day. While charities do track the effectiveness of different fundraising activities for management and decision making purposes the information is more useful to the public in an overall sense and is administratively difficult to collect on a case by case basis.

5.3: Yes, see 5.2 above.

5.4: It is reasonable to expect charities to retain records of tax invoices issued and to be able to re-issue to a donor on request. However any further record keeping is of more significant impost than benefit gained.

Internet and electronic fundraising

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?

6.1: Good Beginnings supports prohibition on electronic fundraising unless conducted by a charity registered with the ACNC, in order to promote public confidence in fundraising.

6.2: This requirement is practical for all communications except where SMS technology may be used, due to technical limitations. SMS communications should be excluded from this requirement given the SPAM ACT already imposes certain mandatory requirements.



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