



JBWere

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Response to Charitable Fundraising Regulation Reform Discussion Paper

JBWere  
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# Introduction

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Thank you for the opportunity to comment on this Discussion Paper.

JBWere is a financial services organisation that provides wealth management and advisory services to a broad range of private individuals and families, businesses, non-profit and corporate clients. Through its major shareholder, National Australia Bank, JBWere has access to a broad suite of banking, funds management and trustee services, and more particularly those focused on servicing the community sector.

The JBWere Philanthropic Services team aims to encourage mutually beneficial relationships between our clients, individuals and families, businesses and their respective stakeholders (i.e. employees, customers and shareholders), and the community sector.

**The principal aims of the Philanthropic Services team are to:**

- promote philanthropy broadly, and where appropriate, incorporate philanthropic planning into the wealth management strategies our clients
- assist charitable, cultural, sporting, member organisations and other NFPs in the management of resources, utilising sound investment principles, whilst understanding the special requirements of these non-taxpaying entities to ensure these organisations' ongoing sustainability. This includes helping to establish relationships with potential supporters who may be able to provide ongoing support.
- work with private and public businesses to assist them in establishing and managing socially responsible strategies and to build appropriate relationships with philanthropic and NFP organisations
- support external financial organisations, dealer groups and independent financial planning firms to educate and service their clients about the most appropriate philanthropic structures and where possible provide appropriate advisory and product solutions.
- explore and support innovative ways to put funding into the community through the use of a variety of social investment alternatives.

The work of the JBWere Philanthropic Services team means we are well placed to comment on the Discussion Paper. The relationships we enjoy allow us to view issues not only from a charity perspective but from the perspective of a company supporting the sector, as an advisor to major donors supporting the sector and as an advisor to a wide diversity of charity recipients.

JBWere also promotes a public ancillary fund known as the JBWere Charitable Endowment Fund, the sole trustee of which is National Australia Trustees Limited.

This submission follows recent JBWere submissions in relation to Private Ancillary Funds, Public Ancillary Funds, Finance for the NFP Sector and the establishment of the Australian Charities and Not-for-Profit Commission. We contribute to the promotion, growth and education of the philanthropic sector in a variety of ways, and distribute information and insight via our website, our employees, our clients and the media.

In this submission we have not attempted to answer all questions posed in the Discussion Paper.

# Discussion Questions & Responses

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

Yes, while there are other laws in the consumer and communications areas, the relationship between donors and charities is different. There are no goods or services given or warranties able to be reasonably given and trust in the recipient organisation is one of the prerequisites needed to make the gift.

## **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.**

While our organisation is not a charity, we have spoken to numerous clients who are and a strong consensus is that compliance costs are higher for national bodies.

## **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?**

It seems that while Australia is on a good trajectory in terms of giving to charity, there is an over emphasis in media on negative aspects in fundraising, rather than the positive results from the vast majority of satisfied donors. More importantly the resulting positive social outcomes achieved by the sector are not highlighted enough, especially when fundraising only accounts for 9% of the funding of the sector. Recent examples including the reported bequest comments at the FIA conference do disproportionately more harm to a potentially donating public than is offset by the good works of the sector.

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

Certainly government funding, which is the main source of sector income is controlled by other reporting requirements and is given by a more powerful body and should be excluded. Private fundraising, including workplace appeals for known colleagues/families where the recipient is not a charity, and no tax deduction is available, should be excluded. Likewise, donations to PAFs should be excluded on the basis that PAFs are prohibited by statute from soliciting public funds. Excluding different types of charity, eg religious, on the basis of their closer relationship to donors becomes a definitional problem in measuring the degree of affiliation a donor has to the charity, eg would an art gallery be able to argue the same as nearly all donors would have visited the gallery in a similar way that religious donors would have visited a church. It also potentially creates a "them and us" type of distrust which in the longer term could harm the protected or excluded groups. Finally, from an analysis of the sector perspective, all donations should be included.

## **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.**

It is not clear where PAFs and PuAFs would sit in regards to fundraising. All would have DGR status (item 2) and some would be defined as large registered entities based on turnover, the rest being medium, based on the ACNCs tiered system. Recognising the private nature of donations to PAFs versus the public nature of donations to PuAFs, should at least ensure PAFs are not caught in reporting requirements above those already in place. One aspect for researchers of the field is to avoid double counting of donations, eg when donations to PuAFs are counted as fundraising and then their distributions to item 1 DGRs are also counted. A similar situation could occur where a hospital or medical research institute has a separate foundation which raises funds from the public, then distributes either those funds or some portion from an accumulated corpus, will reporting recognise this once or twice in terms of total giving?

## **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.**

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

Using the tier system from the ACNC discussion paper and the national average of donations as a proportion of income (9-10%) would suggest the 3 tiers as

- fundraising under \$25,000 if not a DGR
- fundraising under \$100,000 if a DGR and between \$25,001 and under \$100,000 in not a DGR
- fundraising over \$100,000

While this is only an average for charities and many sectors will get much more or less than the 9-10% average, it does fit well with the magnitude of the \$50,000 minimum fundraising level for reporting recommended in the discussion paper. While we support a minimum, we wonder if a distinction, as made by the ACNC, that all levels of donations to DGRs should be included while non DGRs may have a minimum \$50,000 threshold.

**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. Consistency is needed across the sector, not just for the larger charities. If there is concern for the smaller fundraisers, then simply reduce or remove the minimum 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?**

It depends on the degree of change. As the changes to reporting for the ACNC are more complex and potentially overlap, it would make sense to match the dates and transitions time allowances.

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

We welcome the concept of the ACNC as a one stop shop for the charity sector and as such it would be consistent and sensible for that body to authorise fundraising and in their data collection/reporting to also include fundraising reporting requirements.

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

While most would want to fundraise and would welcome an automatic authorisation, there may be some groups with large endowments or others who have a relationship with a separate fundraising charity (eg medical research institutes and a hospital foundation) who don't want or have a need to fundraise. These groups should not be faced with extensive reporting on an area they don't participate in, simply because they are automatically authorised to fundraise. Having the ability to put n/a and a reason if desired and move to the next reporting section would be helpful.

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

The broader registration requirements of becoming and remaining a charity under the ACNC should, ideally, have covered the subsection of fundraising. Creating confidence in a charity being in a position to achieve its mission and produce a social return should be emphasised more in registration requirements than an over emphasis on just fundraising.

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

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

Yes definitely, however it must be recognised that some charity actions will not work and that trying and failing in some approaches is very much a part of eventual success in achieving a social outcome. This is unlike a for profit enterprise selling a product that is defective as their R&D has been funded internally and eventually included in the price of the product, so a consumer should expect and is paying for a working product. This distinction is very important and perhaps some examples could be given of when/how it's OK for a charity project funded by donors to not work, particularly as regards section 29 of the ACL regarding false or misleading representations.

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

Yes. Often from the consumer point of view, unsolicited offers from either for profits or from charities are unwanted and treated the same. This is especially the case when charities use external call centres. Having no charity time restrictions could mean the same call centres doing the for profits until 6pm then doing charities from 6pm until 9pm, a clearly undesirable situation. It would be logical to have the same restrictions.

### **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?**

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

Yes without exception.

### **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?**

The name of the charity should be displayed as should information enabling the donor to confirm the bona fides of the organisation, i.e. that the organisation is indeed a registered charity with authority to conduct fundraising activities.

### **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?**

The desire, as with direct contact fundraising, is to be able to prove legitimacy and provide or at least direct people to relevant information. The difference with unattended sites is the inability to ask so perhaps a contact phone number may be an additional requirement.

### **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. It is more important for a charity that is not a DGR to be required to clearly say that as many people assume all charities are DGRs.

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

Perhaps whether the gift will be tied to a particular project or region or whether the gift will be untied could be disclosed. Most charities prefer untied gifts and we support the need for charities to be adequately resourced including covering administration costs. However in the interests of transparency and hopefully encouraging charities to speak more openly about operations and stop the unhelpful “all of your donation goes to....” discussion, the type of use for donations is an area worth considering.

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

Yes. It would seem that anything that provided a further sense of legitimacy and would be welcomed by charities. The size of the details provided should not overwhelm or dominate the documents.

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

The social returns achieved are the reason for the charities existence and why any fundraising takes place. More emphasis on this area needs to be included in ACNC reporting and especially linked to fundraising. The way this is done is more complex as quantitative reporting such as social return on investment (SROI) calculations are difficult and costly and qualitative reporting is difficult to compare and be used by donors to aid future decisions. The ability to include these elements is highly encouraged as are any moves by the ACNC to aid in education in this area for both charities and the public.

**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?**

It is not clear if each individual fundraising activity is to be reported separately or just totals for the financial year. The former would seem unnecessary and the latter mandatory for those entities above reporting levels set.

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

If sufficient data is kept to supply the required reporting and where needed, receipt details to donors and for overall organisation auditing and financial reporting, adding extra requirements would negate the discussion papers aim of reducing costs.

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

If relevant, the nature of the fundraising would be useful eg if a large prize were offered and purchased by the charity the fundraising cost could be 70% of the funds received, which without that detail would seem very high and inefficient compared to most charities which operate around 20%. Also the level of bequests may be useful for researchers but possibly be resisted by charities as a competitive advantage. In the same way, the number of donors would be helpful in analysing cost of fundraising ie a high number of small donors is going to be more costly than a few large donors.

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

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**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, while perhaps text, twitter etc restricts the size of communication available, for consistency and added proof of legitimacy the extra 11 characters is worthwhile.



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

Some measure of spam restriction and remove/unsubscribe options should be available as applies to other for profit communications.

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

This is a difficult area where trying to balance the need for charities to make the best fundraising decisions against protecting the public from issues highlighted in section 36. We feel that it is the charities who are best placed to decide what method of fundraising works best for them, subject to legislation of course and that it is the way fundraising is conducted, not who does it, that is the most important issue. Whether fundraisers are volunteers, paid employees or hired third party individuals or organisations, they should all be held to the same high standards. Ultimately, we believe it is in the best interests of charities to employ fundraisers who act appropriately and enhance their reputation.

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

As we don't think there should be a distinction made between fundraisers, this is not necessary.

**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?**

It is the charity that will have a fundraising licence and is authorising each group to fundraise, this connection to the charity is known to potential donors through badges, information on flyers etc. Ultimately the responsibility to act correctly comes back to the charity and the actions of individual fundraisers will influence future choices made by charities

**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 concerning disclosure of collections for a charity but not the financial arrangements between them and the charity.

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

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

No

# Conclusion

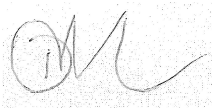
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JBWere, as a pre-eminent adviser and intermediary to the private, corporate, philanthropic and community sectors, is pleased to respond to this Discussion Paper.

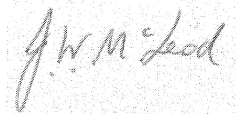
The charitable sector is a force for good and its health is essential to the health of Australia's society. Fundraising reform has the potential to remove confusion in the fundraising community, create considerable efficiencies for fundraising charities and regulators, and ultimately improve public trust and confidence in Australian charities.

We would welcome the opportunity to participate in future consultations or to answer any subsequent questions that may arise from this consultation process.

Yours sincerely



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