

Royal Flying Doctor Service
Submission to Treasury on: ‘Charitable fundraising regulation reform’
April 2012

Introduction

The Royal Flying Doctor Service (the **RFDS**) provides an aero-medical health service for those who live, work or travel in outback and regional Australia. We are a not-for-profit organisation, supported by the Commonwealth and State and Territory Governments. We also receive generous donations from the community and corporations and generate certain funds through services provided under competitive tenders.

In 2011, the RFDS made a submission in response to the Australian Government’s scoping study for a national not-for-profit (**NFP**) regulator which identified centralising functions, regulation and oversight at a federal level, along with reducing compliance costs for the NFP sector, as key goals of NFP reform.

The RFDS also made a submission in response to the Australian Government’s consultation paper on the definition of charity in late 2011. This submission highlighted the importance of defining “charity” in a way that is flexible, achieves consistent and comprehensive regulation of the NFP sector, supports the regulatory role and importance of the Australian Charities and Not-for-profits Commission (**ACNC**) and is supported by ongoing guidance from the ACNC.

Consistent with these priorities identified in our earlier submissions, the RFDS considers that charitable fundraising regulation reform must:

- encourage support for a diverse range of fundraising activities by charities with the aim of generally promoting charitable giving;
- be uniform, flexible and able to be applied consistently, supported by ongoing guidance provided by the ACNC; and
- avoid duplication of existing reporting or compliance obligations that charities in Australia may already be subject to.

The RFDS has responded directly to a number of the consultation questions below which are of most relevance to the operations of the RFDS.

Response to Consultation Questions

Consultation Questions 2.1 and 2.4:

Is it necessary to have specific regulation that deals with charitable fundraising?

and

Should the activities mentioned [in the discussion paper] be exempted from fundraising regulation?

The RFDS broadly supports a nationally consistent approach to regulation in the NFP sector and particularly supports regulation that is flexible enough to address a diverse range of fundraising activities undertaken by all charitable organisations.

The RFDS consists, in part, of many State or Territory bodies and therefore welcomes a nationally consistent system, which aims to minimise duplication and inefficiencies inherent in meeting a range of fundraising obligations across State and Territory regulatory frameworks.

Most charities and NFP organisations generate their income from activities that will fall within the contemplated definition of charitable fundraising. The income generated ranges from small amounts up to more substantial amounts. Within the RFDS across Australia these activities will include:

- (a) Direct requests to provide a gift/deductible donation;
- (b) Donations collected by the RFDS;
- (c) Small or large scale functions where net proceeds will benefit the RFDS;
- (d) Auctions and raffles; and
- (e) Other program activities including partnered or sponsored programs in conjunction with businesses.

From time to time the RFDS also benefits from bequests. Often, individuals make decisions in relation to bequests many years in advance.

Specific regulation dealing with charitable fundraising must be implemented flexibly to respond to the diverse range of fundraising activities undertaken by charitable organisations. The proposed definition of charitable fundraising appears to include every amount received by a charity, with specific exclusions applying in limited circumstances.

The RFDS considers that it may be problematic to regulate charitable fundraising based upon the qualitative nature of individual activities undertaken by organisations. Funds are raised in a variety of ways and in a range of contexts. The RFDS would be pleased to comment further on this issue if further additional information is available on why this information is considered necessary or how it would advance the aims of the ACNC

On the basis of information currently available, the RFDS submits that the (“holistic”) charitable purpose of an organisation and the application to that purpose of funds raised should be the focus for the ACNC, rather than dealing with thresholds or the nature of actual fundraising activities undertaken. The RFDS acknowledges that a number of regulatory obligations already exist for many organisations in undertaking their activities, including those that would arise when undertaking fundraising activities, including reporting obligations with respect to taxation and corporations law, conduct and other restrictions imposed by the Competition and Consumer Act 2010 (Cth), and privacy law.

The RFDS submits that any regulation of charitable fundraising must be broad enough and flexible enough to avoid:

- (a) unnecessary burdens in creating and maintaining a potentially limitless list of specific fundraising activities exempt from the regulatory framework;
- (b) duplicating existing regulatory burdens that apply to charitable organisations; or
- (c) restricting or preventing innovation and responsiveness in approaches to fundraising within the NFP sector.

We caution that an approach of listing exclusions to fundraising regulations may not be flexible enough to take into account spontaneous fundraising arising from events such as natural disasters (floods, bushfires) or government relief appeals.

Consultation Questions 2.6 and 2.7:

Is the financial or other effect of existing fundraising regulation on smaller charities disproportionate?

and

Should national fundraising regulation be limited to fundraising of large amounts?

The RFDS holds the view that any regulation of fundraising should be applied consistently across a range of organisations – and that any regulation should focus on avoiding unnecessary burdens for all organisations rather than restricting the requirements to particular organisations. Incremental, financial and resourcing effects arise with any significant increase in the required reporting frequency or volume.

Establishing a single monetary threshold as a sole measure of applying fundraising regulation to organisations is fraught with difficulty for both charities and for the ACNC. Fundraising activities differ significantly across different charities and even within them. In many cases, it may not be possible to accurately predict the monetary outcome of fundraising activities before the activity occurs.

In addition, certain charities may encounter difficulty if fundraising amounts hover around a set threshold limit and may therefore be subject to reporting and other obligations in some years and not others, which would deny efficiency in compliance with regulatory obligations for charitable organisations.

The RFDS works with a number of small charities operating as “RFDS auxiliaries”. These are often separate legal entities not under the direct control or responsibility of RFDS but subject to influence by the RFDS entities. These usually operate at the lower end of the monetary range for fundraising activities. The RFDS highly values the work of its auxiliaries both for the combined financial contribution to RFDS and for the invaluable contribution to community, participation, engagement and capacity building they provide.

The RFDS submits that:

- (a) the rules should be “one-in, all-in”, with a view to streamlining an effective level of reporting for all entities;
- (b) a single monetary threshold applied to fundraising activity outcomes would not be the most effective way to distinguish large charities from smaller ones for the purposes of applying fundraising regulatory obligations;
- (c) the ACNC should be actively involved in providing guidance, support and reviewing case-by-case transition periods available for charities transitioning to a fundraising regulatory system; and,
- (d) that the RFDS be afforded a further opportunity to comment on the provisions relating to smaller charities and to contribute to development of any transitional arrangements that may be required.

Consultation Question 2.10:

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

The RFDS considers that the ACNC's role should be not only to regulate but to provide guidance on any regulatory measures that apply to fundraising by charities. The ACNC should have the flexibility to provide guidance material and make necessary determinations based on clear and publicly available principles that can adapt to necessary changes occurring in the NFP sector.

The RFDS submits that:

- (a) the ACNC role should be capable of evolving over time, to be flexible, consistent and adaptable to changes in the NFP landscape;
- (b) the ACNC should play a role in ensuring that a common sense approach is broadly applied to determine the regulatory requirements, their application to charities and assessing compliance with them; and
- (c) the ACNC should play a role in providing and updating guidance that is clear, consistent and publicly available.

Consultation Questions 2.11 and 2.12:

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

and

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

The RFDS submits that:

- (a) charities registered with the ACNC should be automatically authorised for fundraising activities under the proposed legislation; and
- (b) no additional pre-requisites should apply for charities registered with the ACNC, before they are able to undertake fundraising activities.

The RFDS considers that this is important to avoid applying different levels of regulatory burden across the range of charities that will be registered with ACNC.

Consultation Question 3.1:

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

The RFDS would be concerned if one set of consumer protection principles was applied by two separate regulators (i.e. by the ACNC and also the Australian Competition and Consumer Commission (ACCC)), given the inefficiencies and potentially inconsistent outcomes that could occur in such a situation.

The RFDS submits that:

- (a) compliance with Australian consumer law principles should continue to be regulated by the body with the most appropriate expertise in dealing with these issues, the ACCC; and

- (b) there should be no duplication across regulators (i.e. reporting and other obligations on charities regarding compliance with consumer law principles should be restricted to the relevant regulatory body that deals with the principles).

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?

There is considerable overlap across activities used by charities for fundraising purposes and those used by non-charitable entities for sales and commercial purposes. Art union raffles managed for charities by commercial enterprises and telemarketing are two examples.

The RFDS submits that regulation of fundraising and sales activities should be undertaken through systems of control relevant to the nature of the activity and not through charitable organisation.

Charities should also continued to be provided with a relaxation of some restrictions that would otherwise apply to commercial enterprises – the ability to conduct a door knock on a Sunday is an example.

Consultation Question 4.1 and 4.7:

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

and

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

The RFDS supports both propositions.

Consultation Question 4.2 and 4.3:

Should persons engaged in charitable fundraising activities be required to provide information about whether the collector is paid and the name of the charity?

and

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

The RFDS submits that attempts at such a detailed level of regulation would be of limited utility across the diversity of charitable organisations and activities.

Some practical illustrations relating to common activities within the RFDS are provided at Attachment 1.

Consultation Question 4.4:

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

RFDS provides collection tins to a multitude of businesses throughout regional Australia and maintains a register and contact with those businesses and records of money received. Security arrangements can vary according to the location however all tins are consistently and clearly identified and can only be opened with a can opener,

The RFDS submits that charities should be responsible for the maintenance of adequate records and provide sufficient security to establish a confidence amongst donors. Such requirements are however matters of good management and good governance that do not fall within the province of regulation.

Consultation Question 4.5:

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

The RFDS submits that adequate regulation and appropriate incentives are already in place in relation to the use of Deductible Gift Recipient status

Consultation Question 4.6:

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

The RFDS submits such information needs to be available on the website and from the organisation itself. It would not be appropriate to burden a volunteer collector with the full argument of the merits of a particular organisation.

Consultation Questions 5.1, 5.2, 5.3 and 5.4:

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

and

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?

and

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

and

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

The RFDS agrees that an important element of charitable fundraising is to account to donors with respect to the use of donated funds. In this regard, however, there is a distinction that needs to be drawn between quantitative and qualitative reporting. Qualitative reporting in relation to outcomes should not be required to be provided to the ACNC; rather, it should be left to charities to decide whether or not to make this information publically available.

It is accepted by all charities that such information is fundamental to attracting gifts from social-conscious donors, but in our view this does not require the involvement of a regulatory body. Any qualitative reporting is inherently difficult for regulators to monitor; further, a requirement to provide qualitative reporting elements will necessarily require guidelines which (regardless of the intent) may prove too onerous for many smaller and medium-sized charities and give rise to difficulties in comparison. The costs involved in collecting and reporting information can be high and there remains a resourcing difficulty for NFP organisations in responding to onerous reporting requirements. In addition, as outlined in our response to consultation questions 2.1 and 2.4, the RFDS is concerned with avoiding duplication of reporting obligations. Many charitable organisations already comply with reporting obligations with respect to income tax, goods and services tax, corporations law and competition and consumer law. Consistent with its previous submissions, the RFDS considers a system in which charities report once, but the information is used often, should be the approach pursued when considering setting reporting requirements for fundraising outcomes. The RFDS believes that there is a key role for the ACNC to play in consolidating these processes.

The RFDS submits that:

- (a) reporting requirements must take into account the need to balance expenditure on compliance against expenditure on the regular and ongoing charitable activities of charitable organisations;

regulation should take into account the wide variety of potential fundraising activities and focus reporting on overall costs and outcomes to ensure a level of comparability across activities and that any information reported to the public provides a true and accurate comparison across organisations. An example of potential variations is at Attachment 2. The RFDS would welcome the opportunity to comment further on this comparability issue.

- (b) reporting requirements should avoid duplication, both between different regulators and obligations at different times to the one regulator; and,
- (c) the ACNC should actively play a part in consolidating information required to be provided into single report templates, rather than requiring charities to provide information multiple times throughout a year on a range of activities.

Attachment 1

Examples of RFDS Fundraising Activities

Relating to Consultation Questions 4.1 and 4.2

A – Birdsville Races

Each year the RFDS in Queensland is the primary beneficiary at the Birdsville races. The airstrip is located adjacent to the race track. A RFDS medically equipped aircraft and medical crew attend the event. Ideally they would be there only to “fly the flag” but invariably the medical crew attend to many and varied needs of the racegoers

- Whilst there are no medical needs one of the crew is standing near the aircraft and accepting donations from those attending. The crew member is on duty and being paid by the RFDS as a member of the aircraft crew
- A member of the Birdsville races organising committee takes a clearly marked RFDS donation tin around the campers seeking donations. This person is volunteering their time to the RFDS but also recognises that if the RFDS medical team was not in attendance the committee would have to bring a medical team from Toowoomba or Brisbane. Is this volunteer still unpaid?
- One of the off duty RFDS medical crew staff takes a donation tin to the crowd in the street outside the Birdsville Hotel. The crew member is a paid employee of the RFDS but is using his / her own time to support the organisation.

B- Fundraising dinner function:

A fundraising dinner is organised by the charity / NFP. A high profile speaker is arranged and because of their support for the charity / NFP they discount their regular speaking fee by one half. To ensure that the function flows well the charity / NFP engages a skilled MC who also charges a fee. Those attending the Saturday night function include paying guests, regular staff who have volunteered their time and the manager in charge of fundraising who is paid a salary.

- When the MC introduces himself / herself and encourages the dinner guests to give donations to support the charity / NFP is he / she required to disclose that he/ she is being paid to be there?
- When the guest speaker does his / her presentation and encourages the dinner guests to support the charity / NFP is he/ she required to disclose that he / she is being paid to be there?
- The staff members who have chosen to come to support the organisation on their own time – are they still paid?
- The manager is paid a salary which usually requires that person to work the necessary hours to get the job done, so that person could be regarded as being at work during the dinner - is he / she required to disclose that he/ she is being paid to be there?

Examples Fundraising Variability
Relating to Consultation Questions 5.1, 5.2, 5.3 and 5.4

The Table below shows five different approaches to raising \$40,000 over a two year period using different. Charity one sells toys as a fundraiser and has a mature market for this activity; the charity has to purchase these products from a commercial business. Charity two establishes a new bequest program and incurs a number of costs in year 1 to establish this with the first larger bequest in year 2.

Assumption -

Charity	activity	Year 1				Year 2				Year 1 plus Year 2			
		Income	Expenses	Net	%	Income	Expenses	Net	%	Income	Expenses	Net	%
One	sales of stuffed toys	80,000	-60,000	20,000	75.00%	80,000	-60,000	20,000	75.00%	160,000	-120,000	40,000	75.00%
Two	bequest program	5,000	-10,000	-5,000	200.00%	50,000	-5,000	45,000	10.00%	55,000	-15,000	40,000	27.27%
Three	donor development	22,000	-9,000	13,000	40.91%	28,000	-1,000	27,000	3.57%	50,000	-10,000	40,000	20.00%
Four	art union	0	0	0	0.00%	250,000	-210,000	40,000	84.00%	250,000	-210,000	40,000	84.00%
Five	sausage sizzles, fetes, lamingtons	22,000	-2,000	20,000	9.09%	22,000	-2,000	20,000	9.09%	44,000	-4,000	40,000	9.09%