

# CHARITABLE FUNDRAISING REGULATION REFORM

Response to: "*Discussion paper – Content 2297*"

Submission to the Treasury

by

Surf Life Saving Foundation

*05 April 2012*

**Australian for life.**



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## Introduction

The Surf Life Saving Foundation welcomes the opportunity to submit our responses to the discussion paper for Charitable Fundraising Regulation Reform.

Operating a number of fundraising activities across State and Territory jurisdictions, the Surf Life Saving Foundation fully supports the establishment of National regulations.

The formation of the ACNC is a positive step and will assist in the education of organisations within the Australian Not-for-Profit sector. So too do we look forward to the ACNC providing essential tutelage to the Australian public on the realities and workings of the sector, along with an in-depth, social and economic cost benefit to our Nation.

The vision of the *National Compact: working together (the Compact)*, is to be commended as it seeks to reduce red tape and streamline reporting. The Compact sets out how Government and the not-for-profit sector will work together to achieve common goals. One collective goal must be the strategic intent of educating the Australian public on our sector.

## Surf Life Saving Foundation

### Overview and Membership

The Surf Life Saving Foundation (the Foundation) is an independent, non-political organisation operating as the National Fundraising Arm for Surf Life Saving in Australia.

Established as an incorporated body in 1998 the original primary focus of the Foundation was to raise funds in the State of Queensland. In 2010, under National agreement, the Foundation was reconstituted and transitioned to play a leading National role for the movement.

The Foundation has as its eight members, the National and State & Territory entities responsible for Surf Life Saving services, namely:

- Surf Life Saving Australia
- Surf Life Saving New South Wales
- Surf Life Saving Queensland
- Surf Life Saving South Australia
- Surf Life Saving Tasmania
- Surf Life Saving Northern Territory
- Surf Life Saving Western Australia
- Life Saving Victoria

The primary aim of the Foundation is to ensure the financial security and viability of the Surf Life Saving movement.

The Foundation has an independent Board of Directors, and as a requirement cannot be 'representative' from within the movement (i.e. cannot hold a position on any Surf Life Saving Management Committee at National, State, Regional or Club level).

Current Board of Directors as at April 2012:

- Stephen Maitland OAM RFD (Chair)
- Neil Balnaves AO
- Alan Rydge
- Deborah Thomas,
- John Kirby
- Lionel Hogg

### Contact Details

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## Activities and Programs

The Surf Life Saving Foundation conducts a wide range of both National and State based fundraising activities.

In doing so, it has first-hand experience in dealing with State and Territory jurisdictional differences and in many jurisdictions, different government agencies.

Annual Turnover: C\$25M - \$30M. This does not include funds procured on behalf of the National, State or Club Surf Life Saving entities through management and facilitation of Grants Seeking services, Bequests Management services, and fundraising event programs. The Foundation, although incurring costs to manage these services, does not receive outcome funding. Funds procured on behalf of Surf Life Saving entities within the services mentioned are transacted directly between the funder and the successful entity.

### Current Activities include:

Activity	Means	Resource	Jurisdiction
General Donations - acquisition and servicing	Face to Face Direct Mail Electronic Mail Telephony SMS transmission Internet	Paid Staff 3 <sup>rd</sup> Parties Volunteer	National State specific
Donations from Public and PAFs	Face to Face Direct Mail Application	Paid Staff	National
Workplace and Payroll Giving programs	Face to Face Direct Mail Application	Paid Staff	National
Lottery / Raffle - acquisition and servicing	Face to Face Direct Mail Electronic Mail Telephony SMS transmission Internet	Paid Staff 3 <sup>rd</sup> Parties Volunteer	State specific - 2 States
Trade Promotions - acquisition and servicing	Face to Face	3 <sup>rd</sup> Parties	Combined State - 4 States State specific
Fundraising Events	Face to Face Direct Mail Electronic Mail Internet	Paid Staff Volunteer	National State specific - 7 States
Bequests and Legacies	Face to Face	Paid Staff	State specific

## Discussion Paper Consultation Questions

*Is regulation necessary?*

*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?*

### Response:

Any activity undertaken with the intent or otherwise of raising funds from the public should be regulated.

A single set of National regulations is ideal however understanding of the complex detailed nature of fundraising in this country, its relationship to the Australian culture and the desired and achievable outcomes related to each charitable activity is paramount before the drafting and implementation of such regulations.

The implementation of the same fundraising activity across Australia requires a significant allocation of resource from a charity perspective. Within the eight State and territory jurisdictions, each National fundraising activity may require individual registration and compliance with all but one jurisdiction (namely NT). The fundraising activity, although in principle and concept is exactly the same, may need to be explained and promoted differently depending on the jurisdiction and permit required.

Reporting too, is just as onerous, having to show and explain financial and other outcomes in tailored ways for compliance within each jurisdiction.

Additionally, depending on the activity, the charity must communicate and register its activities with various State departments within each jurisdiction. For example, one National Charity Fundraising Appeal could involve several fundraising activities – i.e. donations, lottery and/or trade promotion. Should that be the case then the charity must comply with State and territory regulations that are governed through different State based departments. i.e.: 1) Donations via State body responsible for Collections Act, and 2) Lottery, via State body responsible for Gaming.

Internet and Social media extend the Charity's audience (without control) over geographical areas therefore it is difficult for a charity to completely restrict fundraising activity to one geographical area.

In order for a charity to meet its compliance requirements (activity applications and reconciliations), as well as the need to demonstrate use of funds to achieve desired outcomes, the charity must continually expend on resources. Planning, applying to State and territory agencies, monitoring and reconciliation, promotion of outcomes and all corporate based compliances must be achieved. While highly desirable, the aforementioned activities impose costs on the charity.

The Surf Life Saving Foundation receives no government support and is supported 100% by community and corporate funding. Therefore the only avenue to ensure compliance and achievement of desired charitable outcomes is to utilize discretionary funding which comes direct from fundraising.

The Surf Life Saving Foundation supports and welcomes the concept of National regulation and transparency however also is acutely aware that the Australian public does not fully understand the simplistic workings of charitable operations. If the establishment of the ACNC, as stated on page 5 of the Discussion paper, has *"the potential to enhance governance and monitoring via a public information portal that will include financial and other information provided by registered charities"*, then we strongly suggest the ACNC also have a high level communications plan to engage with the general public and charities. If not structured appropriately i.e. detailed reporting on all facets of a charities operations, the information portal has the potential to, in an effort to enhance transparency, promote information that could easily be misleading to those who do not fully appreciate or understand sound business and fundraising principles.

National Regulation is welcomed however only if it will reduce resource duplication and compliance expenditures.

*Defining fundraising activities that are to be regulated*

*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.*

Response:

The Surf Life Saving Foundation supports exemptions for the activities listed and provides the following notations:

- 1) In reference to *"Soliciting for government grants"*, *"seeking corporate support"*, *"seeking support from public and private ancillary funds"* and *"Seeking partnerships or project funding from Trusts and high wealth individuals"*; we support exemptions from fundraising regulations due to the nature of these activities not being primary 'public fundraising' activities, with all bodies mentioned having the ability to complete due diligence prior to funding the charity.

- 2) We also agree that donations to private ancillary funds should be exempt from fundraising regulation. Private ancillary funds, while they are deductible gift recipients, do not engage in solicitation of public funds and in fact are prohibited from doing so under item 45 of the *Private Ancillary Fund Guidelines 2009*. PAF's are generally well known to their donors.
- 3) We agree that "*Donations to religious organisations from their own members*" should be exempt that on the basis that the recipients of such funds are usually personally known to at least a significant proportion of the donors.
- 4) We also believe that the exemption above should be broadened to any other organisation's own members (i.e. not just religious organisations) on the same basis being that the recipients of such funds are usually personally known to at least a significant proportion of the donors.
- 5) We support the exemption of "*Workplace appeals for assistance for colleagues and their families*" – on the basis that the recipients of such funds are usually personally known to at least a significant proportion of the donors

We also note that the abuse of any of the above exemptions would be covered by a range of other laws and regulations (i.e. Australian Consumer Law, common law and criminal law).

We have supported the exemption from fundraising regulations of certain activities as listed above, however also note that these items should be considered when criteria of transparency is determined as part of the public "information portal" requirements. (i.e. should these activities be included or exempted as 'fundraising' costs?). The repercussion of such decision may significantly influence the determination of charitable efficiencies (if only comparing against fundraising costs).

*Implementing a national approach*

*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?*



Response:

We support an exemption for smaller scale charitable activities up to a maximum of \$50,000 per annum, providing the exemptions as outlined earlier in this paper are accepted. We also note that this exemption is solely based on the amount of funds raised and not based on the "*size of the charity*". Any non-regulated charitable activity still poses risk, however any misrepresentation or misuse of funding raised is covered by existing laws. States and Territories should not separately regulate these activities.

Existing fundraising regulation in certain State jurisdictions currently provides a host of challenges for newly formed charities (or those required to increase their activities). For many, finding new supporters (acquisition) is extremely difficult in a crowded market, therefore expenditure in initial stages needs to be proportionally higher than normal. Many charities would find this difficult with current regulations (in some State jurisdictions).

In terms of compliance burden we do not believe the "*size of the charity*" is an appropriate consideration and recommend the "*financial turnover of charitable activities*" be used as the gauge. Regardless of the size of the charity, it is the size and type of charitable activity or activities that will determine the level of compliance burden and cost.

There should be one set of regulations. Should a charity with smaller levels of charitable activities (i.e. under \$50k per annum) be exempted from the national fundraising regulations but still subject to State or Territory fundraising legislations, the administrative burden will not be lessened. The aim is to reduce the compliance burden, therefore a national approach must be truly national.

National fundraising regulations should only apply where State and Territory fundraising regulations no longer apply. The transition timeframe therefore will greatly depend on the decisions by State and Territories agencies. Only then can a transition timeframe for charities to adopt a new set of regulations be determined.

*Registering for fundraising activities*

*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?*

Response:

The role of the ACNC should be to act as the regulator for charitable fundraising. Any requirement to separately register with State and Territory regulators should be avoided in order to reduce the compliance burden and costs.

If the ACNC's focus is to ensure the sector is providing community benefit in a transparent way, then the ACNC's education role should be focussed on achieving this and providing support to organisations to ensure regulatory compliance. The ACNC would best deliver this via online services (tools, information, etc) and via telephone help desk support. Similarly, the ACNC's education role should also be focussed towards community education providing a comprehensive public education campaign that demonstrates 'how' the community should read the transparency on offer.

Information provided by the Fundraising Institute of Australia (FIA) states: "Donors use very different, personal measures of trust in a charity compared to the economic, financial or legal measures which tend to be used by regulators. Donors prefer to assess charities by intangible, social measures such as familiarity, word-of-mouth, or the prominence of the charity in their community. Regulators, on the other hand, tend to require charities to disclose information on fund use (e.g. ratios between overheads and funds available for the charity's purpose). To meet the needs of donors, regulators should concentrate on distributing information to donors which informs donors about the effectiveness of the charity, rather than its fund allocation. (Szper,R and Prakash,A: *Charity Watchdogs and the Limits of Information- based Regulation* Voluntas (2011) 22: 112 – 141)"

In general terms, all charities registered with the ACNC should be automatically authorised for fundraising activities under national legislation. It is difficult though at this time to provide further insight as the 'definition of charity' is still yet to be determined. However should automatic authority to fundraise be given as a 'blanket' authorization to all those registered with the ACNC, then those bodies who do not partake in solicitation of public funds (i.e. PAFs) should not be burdened with additional reporting requirements.

In principle, we support that "*Insolvency*" should result in an automatic withdrawal suspension of the authority to fundraise. Further we support that any misleading conduct or representation which has resulted in a conviction or successful civil action should result in a review of a charity's authority to fundraise by the ACNC.

We support the notion that the ACNC should have the power to investigate and enforce these provisions, and determine the extent of any suspension or ban applied to individual charities. In an effort to ensure the charitable sector reputation is maintained, the ACNC should have the capacity to impose penalties that are proportionate to the nature and extent of improper behaviour by individual charities.

*Application of consumer protection laws to charitable fundraising*

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

Response:

There is a distinct difference between charitable and commercial outcomes. All provisions of the Australian Consumer Law should apply for commercial activities but not all provisions should apply for charitable fundraising.

The supply of goods or services where directly connected to an altruistic purpose or when fulfilling the objects of a charity should be treated differently to commercial arrangements.

Current definitions of the ACL are so broad that they capture a number of everyday charitable fundraising activities as Unsolicited Consumer Agreements (UCAs). Direct donations are exempted from UCAs however fundraising activities such as Lottery purchases, golf days, charitable dinners and trade promotions are not. The fundamental differences between fundraising and commercial transactions taken in normal trade or commerce for profit appear not to have been taken into account.

Prior to the introduction of the UCA's under the ACL, the laws in NSW, WA and the ACT exempted fundraising appeals, charitable activities or distinguished goods and services by a charitable organisation from being subject to the laws designed for commercial goods or services. i.e. – in general terms we have been advised that:

- NSW exempted "fundraising appeals" as defined in the *Charitable Fundraising Act 1991* from the direct commerce provisions of the NSW Fair Trading Act;
- WA prescribed that the supply of goods and services by a benevolent organisation formed for the relief of poverty or advancement of religion or otherwise involved in charitable activities should be exempted from the requirements of 'prescribed contracts' under the *Door to Door Trading Act 1987*;
- ACT exempted contracts for the supply of goods and services by a charitable organisation from the 'prescribed contract' provisions of the *Door-to-Door Trading Act 1991 (Australian Capital Territory)*.

We support the above previous approaches taken by these jurisdictions which acknowledged the key differences between NFP and commercial organisations. The Surf Life Saving Foundation supports a return to the previous legislative position and reaffirms its belief that charitable giving in any form should not be classified as an UCA.

We do though agree that if a charitable organisation is undertaking a commercial enterprise that is not a charitable activity or is in fair competition in trade or commerce then the ACL should apply. i.e. a charity retailing products (such as water or sunscreen) in competition with other suppliers in a retail outlet, or a charitable organisation provides commercial services to the general community (i.e. mailing services for revenue generation as a commercial arrangement), then they should be on a level playing field with normal commercial enterprise.

*Charitable fundraising and calling hours*

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

Response:

The Surf Life Saving Foundation supports the ACL door to door activity process and default permitted hours for calling on a consumer in an unsolicited circumstance – i.e.:

- Monday to Friday, 9 am to 6 pm; and
- Saturday, 9 am to 5 pm.
- Dealers are prohibited from calling on a consumer on a Sunday or a public holiday.

We note the permitted hours specified in the ACL are default times and may be varied by individual States and Territories by regulation under their respective application laws (s.73 ACL).

We also support the hours for door to door activity to be uniform with the rest of the ACL.

There is justification for the ability to extend appointment hours should a donor or potential donor wish for this to be the case. Charities would be responsible for the implementation of a transparent recorded and signed appointment process.

In regards to other Face to Face approaches, we question the appropriateness to place hour restrictions on fundraising events and activity in leased sites (shopping centres / shows).

Events occur during all hours of the day, over weekends and public holidays. Some contractual requirements with shopping centre site leasing require the site to be manned at all times of shopping centre operating (opening) times. This includes hours outside those associated to door to door activities.

*Charitable fundraising and unsolicited selling provisions of the ACL*

*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?*

Response:

Noting the exception listed below (\*\*), charities should be exempted from UCA provisions of the ACL which relate to the supply of goods or services over a \$100 threshold, within a designated area (i.e. shopping centre stall) and during a publicised event.

The Surf Life Saving Foundation does promote fundraising activities utilising a range of channels such as courses, events and lotteries (raffles) that could have a ticket value of over the \$100 threshold. After several attempts, the Federal government has not yet been able to clarify whether raffle / lottery activities are in fact goods or services. Our stance is that they are not and should not be covered by the ACL. This is supported by the current practice of the Australian Tax Office in exempting charities from paying GST on bingo and raffle tickets, provided they comply with the relevant State or Territory laws concerning gaming. It is currently an absurd situation in that the ACL conflicts so fundamentally with the Australian Tax Office practice. In the meantime, the Surf Life Saving Foundation has adopted the practice that they are included under ACL and have declined many tens of thousands of dollars in support of our charity due to complying with the regulations.

\*\* Note: An exception to the above is if a charitable organisation undertakes a commercial based activity that is not a direct charitable activity or is in fair competition in trade or commerce. In these circumstances the ACL should apply. (Examples provided earlier under Discussion Response 3.1)

We support the current practice where charities have some exemptions under both the SPAM ACT and the Do Not Call Register Act 2006.

*Information disclosure at the time of giving*

*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?*

Response:

We note and re-emphasise the integral role the ACNC should have in the education of the Australian public regarding support of charitable organisations. The discussion document itself (Point 45) refers to the general public separately as donors and consumers. Previous terminology within review documentation has focused on donors as those making 'donations'. The ACL provides exemptions for donations however it does provide exemptions for 'consumers' (linked to goods or services).

In regards to information disclosures the Surf Life Saving Foundation believes it is prudent to provide essential information to potential donors and supporters regarding charitable activities. It is unrealistic to provide all information required by some donors on all documentation or in all mediums.

We support essential disclosure of:

- the name of the charity
- the purpose for which the money raised will be used
- contact details for the charity and where to get additional information
- the name of the person conducting the fundraising

Under Discussion Paper Point 49, we respectfully disclose our belief that the writer has used discretionary presumption by stating *"Some donors may prefer to donate to charities that use voluntary, rather than paid collectors and all donors are likely to require at least the name of the charity to which a donation is being made"*. Whether the individual works for the charity, is employed via a third party body or volunteers, there is a cost associated with a fundraising acquisition process. Our anecdotal research suggests that donors want to be assured that the charity is efficient in providing end services and outcomes. Each charity has and must have a different fundraising and delivery model. Some have volunteers fundraising and pay for services; others like the Surf Life Saving Foundation employ professional fundraisers and have volunteers deliver services.

With this regard we again urge the ACNC to play an education role for general public regarding charitable differences and provisions. The focus should be on charitable outcomes.

In the case of door to door soliciting for charitable donations, it would be inappropriate to disclose specific financial agreements between the charity and a professional fundraising body, especially

when the individual remuneration may not influence the agreement. Individuals soliciting for charitable donations should clearly identify core information as stated above. Further information such as the extent or nature of commission arrangements should be a discussion between the consumer/donor and the charity.

We support the provision of an ABN on charitable fundraising material wherever it is possible and appropriate.

We support the provision of a DGR disclosure and whether the gift could be deemed as tax deductible. We note that tax deductibility can only be resolved by the Australian Taxation Office and that charities do not necessarily possess the knowledge or expertise to give such advice to donors.

We support the notion of charities acknowledging that they are registered with the ACNC on their websites and collateral, however this should be at the discretion of the charity and not an ACNC registration requirement.

*Information disclosure after the time of giving*

*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?*

Response:

We support the notion that charities should disclose within their annual reports their mission, objectives, activities and outcomes. We strongly object to the display of cost of fundraising ratios on the basis that industry research shows that "such ratios do not accurately reflect the costs of fundraising or reflect the effectiveness of investment in fundraising" (FIA 2012). See Fundraising Institute of Australia's research:

<http://www.fia.org.au/data/documents/Resources/Research/FIAPrincipalresearchfindings2004.pdf>

We support the inclusion of a concise narrative that outlines outcomes achieved by a charity. Cost ratio only partly shows an efficiency of "fundraising" – it does not show the total efficiency of the charity in terms of outcomes. This has already proven to be misleading with the Surf Life Saving Foundation forced to defend an open total business cost in the media during October 2011. What were not shown within the cost ratios were the financial and other outcomes not recorded directly

to the Foundation accounts (i.e. we expend costs in management and coordination of events and programs that result in millions of dollars raised specifically and directly for other Surf Life Saving entities. None of which are taken in as revenue by the Surf Life Saving Foundation).

We support the inclusion of measures of output, outcome and impact to improve completeness of reporting by demonstrating what the funding achieves, rather than how it is spent. We support transparency around fundraising reporting however are extremely cautious as to how these will be delivered and/or represented.

Industry research shows that modern fundraising practices measure productivity over longer periods of activity, rather than the outcomes of individual events and therefore we are opposed to any specific percentage or cost of fundraising ratio being included in legislation that applies across all organisations.

We accept that the cost of fundraising is one of several indicators that charitable organisations may wish to utilize for reasons relating to managing their internal systems and costs or for sector specific benchmarking exercises.

It should be noted however that to qualify and quantify outcomes, many charities will need to expend funds raised to implement required productivity / output research. Funds utilized for these purposes would be generally from funds raised from the public. Therefore less end outcomes for the sake of reports.

We also make note that ACNC public education will be required to ensure general public are aware that some fundraising activities do not provide a great return immediately and may even lose money, but offer longer term engagement and build future funding support. It is extremely difficult to specifically ascertain how the successful engagement of a new donor / supporter was actually acquired (i.e. was it face to face but only after seeing an advertisement / was it phone after receiving a mail piece / etc).

In terms of record keeping, all charities should keep accurate records about who has donated what amount, for what purpose and under what fundraising campaign. They should also be required to report in a publicly accessible way about how the monies raised have been used. This may take the form of descriptions of activities or provide more detailed outcome information.

*Internet and electronic fundraising*

*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?*



Response:

We support the stance that only registered charities should be able to conduct electronic and internet fundraising.

Where practical – on all printed materials and websites – the ABN should be clearly stated. SMS communications should be excluded from this requirement given the SPAM ACT already imposes certain mandatory requirements.

Legislation surrounding use of mobile phone giving should be readdressed.

*Fundraising by third parties on behalf of charities*

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

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

*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?*

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

*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?*

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

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

Response:

While it is imperative to maintain confidence within the community in third party fundraising it is the responsibility of the charity to ensure that third party fundraisers comply with all relevant legislation. It is not appropriate for the ACNC to supervise commercial third party fundraisers, as this is outside the scope of the proposed legislation. Additionally, other legislation such as the ACL already exists to apply to commercial activities.

We believe that third party fundraisers should register with ACNC, provide their ABN, comply with an industry Code of Practice, the ACL provisions on behaviour towards consumers and to have information on the organisation, including contact details and ABN, available to the public.

As stated previously within this document, we believe, in the case of third party fundraisers soliciting for charitable donations, it would be inappropriate to disclose specific financial agreements between

the charity and a professional fundraising body, especially when the individual remuneration may not influence the agreement. Individuals soliciting for charitable donations should clearly identify core charitable organisation information. Further information such as the extent or nature of commission arrangements should be a discussion between the consumer/donor and the charity.

Additionally third party fundraisers provide charities will a cost efficient and flexible avenue to engage their cause with the general public. Within a specific fundraising appeal, the financial outcomes when comparing third party costs to in-house costs depend greatly on the service and expertise available to both parties. The Surf Life Saving Foundation has found that in many areas of fundraising activity, it is more cost effective and risk adverse to engage third party fundraisers to complete specific tasks. With this first-hand knowledge the Foundation queries the validity of why it is recommended that charities should disclose a third party fundraiser (and costs) but not have to disclose the cost burden of in-house professional staff. If this is regulated then we foresee a continuation of charity sector inadvertently deceiving the public by inferring third party fundraisers are not as beneficial to charitable organisations as in-house staff. Again, this is a prime example of the need for the ACNC to provide tutelage to the Australian public on the workings of the charitable sector.

Further to the above, the Foundation conducted a test in the State of Western Australia during the FY 2009. We identified, selected and trained a group of well-meaning and enthusiastic volunteers - all Surf Life Saving members. At the conclusion of the initial two month trial the program was abandoned due to extremely poor results which returned a negative cost result to the Foundation. Our financial and resource costs were expended prior to the program commencing. This is not the case with the majority of third party contracts and agreements and we have found resource requirements for overseeing volunteers is far greater than that required for third-parties.

The sector is currently highly regulated between the Charitable Collections Acts, Gaming and Racing licensing requirements and the Competition and Consumer Act. A simplistic regulation that states: "No fundraising should take place without proper written authority from the charity" should be sufficient.

## Conclusion

The Surf Life Saving Foundation operates a number of fundraising programs and activities within and across State and Territory jurisdictions. We fully support the establishment of National regulations; however believe these must replace existing separate State and Territory regulations.

We are opposed to the establishment of new or additional regulations and compliance burdens at this stage as there is no evidence that supports this will lead to efficiencies and/or enhanced public trust.

We support the formation of the ACNC to assist in the education of organisations within the Australian Not-for-Profit sector. We implore the ACNC to provide essential tutelage to the Australian public on the realities and workings of the sector, along with an in-depth, social and economic cost benefit to our Nation.

We respectfully request that new fundraising regulations should be aimed to encourage and support fundraising activities by charities. We see no supportive evidence to indicate public mistrust of charities.

We are pensive in our thoughts regarding the ability of the ACNC to provide true and objective 'transparency' to the Australian public and are strongly opposed to any suggestion that a fundraising cost ratio can be utilised as a measurement of efficiency or effectiveness.

We support that the inclusion of measures of output, outcome and impact will improve completeness of reporting by demonstrating what public funding achieves, rather than how it is spent. We support transparency around fundraising reporting however are extremely cautious as to how these will be delivered and/or represented. Never before has it been more critical for charities to diversify their income and build their capacity.

We believe National fundraising regulations must take account of existing more generic laws including the criminal law, corporations and associations incorporation law, consumer protection laws, common law and others.

We believe this review provides the opportunity to reflect and evaluate the variety of ways and number of mediums utilised to fundraise now and in the immediate future. Efficiencies through volunteers and in-house staff are no longer as prevalent as they were in past years. Internet and Social media has erased geographical barriers. Corporate and commercial expertise and application is a basic requirement. The sector at present does nothing to stand up or promote itself, yet contributes enormously to the social and economic benefit of our nation.

In closing, we believe the Surf Life Saving Foundation would make an ideal consultative body for the ACNC, having focussed for a number of years primarily within one State jurisdiction before expanding programs and utilising various mediums across and within all State and Territory jurisdictions for the past three years. We would be available for further discussion at your request.

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