



## Submission to Charitable fundraising regulation reform – Discussion paper and draft regulation impact statement

### Executive summary

This is a joint submission by The Australian Charities Fund Operations Limited (ACF) and United Way Australia (UW) (referred to as 'we' in the submission). There is some short background on our organisations at the end of this submission.

We strongly support a nationally consistent approach to regulating charitable fundraising.

Key points in this submission:

1. The growing practice of money being donated through activities in workplaces needs to be specifically addressed in any reform.
2. An employer promoting giving in the workplace should be exempt from requiring a licence to do so.
3. Regulatory reform should result in nationally consistent legislation (without the possibility of either:
  - residual regulation through State or Territory legislation of areas not covered by the nationally consistent legislation, or
  - individual State or Territory jurisdictions legislating variants on the national scheme).

### Detailed commentary

1. Observations about giving in the workplace

Any reform of fundraising regulation needs to deal expressly with the concept of giving in the workplace. There are significant and growing levels of:

- monetary donations by the staff of Australia's employers to the charitable sector, and
- other monetary donations going to the charitable sector as a result of activities conducted by Australia's employers.

In this submission we refer to all these activities collectively as 'Giving in the Workplace'.

There are a number of places in the paper where donations connected with those concepts are mentioned, being:

- Paragraph 18 (second bullet) – the reference to 'corporate donations'. This concept is expanded on in paragraph 64.<sup>1</sup>
- Paragraph 18 (third bullet) – the reference to 'workplace appeals for assistance for colleagues and their families'.
- Paragraphs 63, 64 and 65 – the reference to 'for profit' entities and 'corporate donors'
- Paragraphs 73 – 76 – the reference to 'private participators'. Paragraph 73 refers only to private entities that 'dedicate a portion of their profit from the sale of goods or services to a particular charitable purpose'. However, the examples given in paragraph 74 are broader than this.

We submit that those references do not comprehensively describe all activities associated with Giving in the Workplace. In practice Giving in the Workplace incorporates<sup>2</sup>:

- Payroll giving – This process allows employees to donate money to one or more charities via pre-tax payroll deductions. The employee must consent to the deductions. The consent can be given for ongoing regular donations (usually on each pay day) or a one off donation. Charities to which donations are made via payroll giving must have Deductible Gift Recipient (DGR) status. A Deductible Gift Recipient is an organisation approved by the Australian Taxation Office (ATO) as being entitled to receive tax deductible donations. The ATO permits employers to calculate tax on an employee's pay net of payroll giving donations. The employer sends amounts deducted from their employees' pay to the nominated charities (either directly or through using the services of an intermediary).

ATO data to 30 June 2010 indicates there were then 2857 employers in Australia through which \$28 million in payroll giving donations were processed. In total about 100,000 Australian employees donate to charity in this way. We can reliably estimate employers donated another \$12 million in matching donations, resulting in over \$40 million for the community sector from payroll giving programs in FY10. This form of giving is growing strongly and our organisations are actively promoting it

- Donations from the employer's staff – Many employers (not just private entities but also government departments, semi-government entities and not for profits) hold staff fundraising events. This can revolve around national fund raising days for large charities such as the Cancer Council's Daffodil Day, Movember, National Breast Cancer Foundation Pink Ribbon Day etc. Alternatively, there might be a particular cause to which the employer might want to encourage its staff to donate – often this will be led by the wishes of the staff. Finally, disaster appeals see large amounts of money raised through workplaces. Typically, staff donate cash into collection boxes in their workplace and often 'events' are held in the workplace to celebrate the activity. Some employers allow staff to make one off donations in relation to these appeals via a payroll deduction (one off pre tax payroll deductions are

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<sup>1</sup> It is not entirely clear to us what type of activity is being referred to in the second bullet point of paragraph 18. On its face it appears to be referring to whether a charity seeking donations from a corporate donor needs a licence to do so. However, paragraph 64 cross refers to chapter 2 (it appears to be a cross reference to paragraph 18 as it repeats a reference to due diligence). This suggests the second bullet point of paragraph 18 might be referring to the activity of 'corporate donors' gathering funds from either their customers or employees for on-donating to charities.

<sup>2</sup> This submission does not deal with donations by employers of their own money other than as a result of income generated through cause related marketing. This is because it is focused on the issue of whether an employer should be subject to regulation when conducting activities aimed at generating income for charities from its staff and customers.

permitted under the ATO rules). Again, the employer sends amounts donated to the relevant charities.

- Donations from customers – A fairly common practice sees businesses encouraging their customers to donate to specific charities. Usually, this takes the form of collection boxes in shops/ business premises. Again the business sends donated amounts to the relevant charities.
- Cause related marketing - This is the practice described in paragraph 73 of the discussion paper (ie a business trading in goods or services dedicating a portion of their profit from the sale of goods or services to a particular charitable cause)

## 2. Principles underlying regulation

We agree with comments in paragraphs 8 and 9 of the discussion paper about the purpose of regulation of charitable fundraising, namely:

- 'to ensure public confidence and trust in fundraising'
- 'increase the public's willingness to participate in fundraising activities'
- 'protect the charitable sector and the public against persons or entities falsely identifying themselves as charities or as acting on behalf of charities, or misrepresenting the purpose of their entity or fundraising activities'
- 'prevent ...public nuisance or inappropriate invasion of privacy'
- 'record-keeping and public reporting.....support trust and confidence.....by increasing transparency and accountability'.

We submit these can be summarised as:

- ensure public confidence
- protect against fraud
- prevent public nuisance, and
- promote transparency and accountability.

We submit there are two other objectives which should apply:

- any regulation should be tempered by a recognition that it is desirable to reduce red tape for charities, and third parties assisting in their fundraising, as much as possible consistent with the principles described above
- regulation should be aimed at encouraging the growth of donations to the charitable sector.<sup>3</sup>

Any regulation of employers promoting Giving in the Workplace is likely to result in a reduction in these activities, which we believe would be detrimental to the charitable sector. Conversely, a

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<sup>3</sup> Relevantly, the Parliamentary Joint Committee on Corporations and Financial Services, in its June 2006 Report on Corporate Responsibility (the "Joint Committee Report"), concluded that the federal government ought to encourage Australian businesses to increase their corporate responsibility activities (at pages xvi and xvii to xix). The Supplementary Report by the Labor members of the Committee (beginning at page 173 of the Joint Committee Report) was even stronger in stating the belief of those members that Australian businesses ought to have a systemic and integrated approach to corporate responsibility and that government ought to do even more to encourage them to do so. This report evidences it is in the national interest, and therefore of public benefit, that Australian businesses be encouraged in their corporate responsibility activities. Similar comments were made in the 2010 Productivity Commission Research Report (Recommendation 7.4).

clear exemption from regulation for employers promoting Giving in the Workplace will be a welcome and clear signal to employers likely to promote the growth of Giving in the Workplace.

3. Comments on consultation questions

**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.

The activities referred to in paragraph 18 of the discussion paper should be exempt from regulation (including either type of activity referred to in footnote 1 of this submission). We submit, in addition, that any activity by an employer promoting Giving in the Workplace should be exempt from fundraising legislation.

Where donations are sourced through any form of Giving in the Workplace, concerns about ensuring public confidence, protecting against fraud and preventing public nuisance should be negligible. We agree with the observations in paragraph 76 of the discussion paper. Employers engaging in corporate responsibility activities primarily are doing so to enhance their reputation and promote employee and customer engagement. They are highly unlikely to engage in activities which could adversely impact on their reputation either internally or externally.

Additionally, we agree with the broader comments in Chapter 7 of the discussion paper that third parties assisting in fundraising which do not receive financial benefit from the charities for doing so should not be subject to regulation. Imposing licensing or other regulatory obligations on employers promoting Giving in the Workplace is likely to have a significant negative impact on the willingness of employers to promote these activities, which in turn will result in smaller amounts of money flowing to the charitable sector.

In order to create certainty for employers (of all types: corporate, government, semi-government, not for profit) we submit that a specific exemption from regulation should be enacted for all employers engaging in Giving in the Workplace activities.

*Comments on due diligence*

For completeness, we believe it is necessary to comment on the issue of due diligence. In paragraphs 18 and 64 of the discussion paper, some weight is given to the concept that a corporate or ancillary fund donor either knows the recipient or is better placed than the public at large to conduct 'due diligence' of potential donation recipients.

Potential recipients of Giving in the Workplace constitute a wider class than the specific scenarios referred to in paragraphs 18 and 64 of the discussion paper.

While, in many cases, employers will conduct some form of investigation of charities they intend to promote through Giving in the Workplace activities (it is common for employers to do this), this will not always be the case. For example, some employers provide their staff with the option to

donate to any charity of the employee's choice through payroll deductions (provided, of course, it has deductible gift recipient status).

We do not believe regulation of an employer's Giving in the Workplace activities should be conditioned on whether it conducts or is in a position to conduct due diligence on potential recipients. This would significantly adversely impact on employers' willingness to promote Giving in the Workplace.

We strongly believe the fact a potential recipient is a registered charity should be sufficient proof to an employer that it is an organisation suitable for promoting through its Giving in the Workplace activities.<sup>4</sup> The new regulation regime to be imposed under the ACNC will result in consistent reporting of all charities with the capacity for anyone to search the register to ascertain all publicly available information. This will significantly enhance the promotion of transparency and accountability.

**Consultation questions:**

**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?**

We submit there should be one national regime covering all charities. We do not support limiting national legislation to 'large amounts'<sup>5</sup>. Maintaining individual State and Territory regimes for some categories of charities will increase complexity. Most small charities aspire to increase their fundraising. Placing arbitrary caps on fundraising amounts before national regulation becomes applicable will produce unnecessary complication and monitoring obligations.

Regulatory reform should result in nationally consistent legislation (without the possibility of either:

- residual regulation through State or Territory legislation of areas not covered by the nationally consistent legislation, or
- individual State or Territory jurisdictions legislating variants on the national scheme).

**Consultation questions:**

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

<sup>4</sup> To the extent the fundraising activity is a workplace appeal for a non charity (see third bullet of paragraph 18 of the discussion paper), this could be covered in the legislation through a specific exemption for non public appeals.

<sup>5</sup> What is a 'large amount'?- is it the total amount raised by a charity in a financial year or is it the size of an individual gift? Either way, it is impossible for charities to predict the level of gifts. Any attempt to limit national fundraising regulation to gifts over a particular size is likely to produce complexity and uncertainty.

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?

Broadly, we believe internet and electronic fundraising should be the subject of regulation. However, any such regulation should recognise the role of intermediaries providing platforms for electronic fundraising. Some of these operate as for profit entities and should be allowed to continue to do so. Also, depending on the final outcome of the definition of 'charity' there may be 'not for profit' entities wishing to conduct internet and electronic fundraising for the benefit of charities but which are not themselves charities. Those entities also should be allowed to do this activity and not have excessive regulatory obligations imposed on them which could limit their willingness to promote giving to charities.

The requirement to have ABNs on all communications may prove impractical in some circumstances (particularly where information is given on screens of mobile devices).

Finally and importantly, an employer promoting Giving in the Workplace electronically to its staff (either through a locked intranet or other mobile technology enabling communication with their staff) should not be subject to regulation.

#### Consultation questions:

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

7.2 Is it 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?

We do not propose to comment on these questions except to re-iterate that, for the reasons set out above, we do not believe employers promoting Giving in the Workplace should be the subject of regulation.



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The Australian Charities Fund [http://www.australiancharitiesfund.org.au/](http://www.australiancharitiesfund.org.au) is a not for profit social enterprise whose vision is to see significant social impact through employers and charities working together.

Our mission is to facilitate engaged employee giving by connecting employers and charities by providing advice, capacity building, facilitation and leadership.

Since its establishment in 2002, ACF has assisted over 100 mainly large and medium sized employers launch and grow workplace giving programs. This has resulted in over \$85 million being donated to the community sector. About 120 charities (including most of Australia's largest charities) partner with ACF with a view to growing awareness of and participation in workplace giving.



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United Way <http://unitedway.com.au/> is a global network that for 125 years has worked to bring about positive change, all around the world. Harnessing the 'caring power' of our communities, we tackle the root causes of our most pressing social problems. Annually we raise \$5 billion to support local communities in 41 countries. In Australia we run Workplace Giving programs that include the:

- Raising and investing over \$6m in local communities across Australia
- The engagement of over 2735 Corporate Volunteers through our volunteering program
- Improving the lives of over 12,285 Australians through our volunteering programs

United Way's Community Impact strategy is all about collaboration - building coalitions around common social goals that include:

- Education- preparing children for school through early intervention learning strategies
- Income - creating effective school to further learning or earning pathways
- Health- ensuring adolescents have adequate early intervention Mental Health support