



5 April 2012

Charitable Fundraising Regulation Reform Discussion Paper
Infrastructure, Competition and Consumer Division
Treasury
Langton Crescent
PARKES ACT 2600

Email: NFPReform@treasury.gov.au

Dear Sir/Madam

Submission on Charitable Fundraising Regulation Reform Discussion Paper

Thank you for the opportunity to make submissions in relation to the Discussion Paper and draft Regulation Impact Statement on Charitable fundraising regulation reform ("**Paper**").

About Movember

Movember's vision is to have an everlasting impact on the face of men's health. We do this by raising awareness and funds through the annual Movember campaign. On Movember 1st, guys register at Movember.com with a clean-shaven face and for the rest of the month grow their moustache and raise funds by seeking out sponsorship for their Mo growing efforts. Mo Bros effectively become walking, talking billboards for the 30 days of November, and through their actions and words raise awareness by prompting private and public conversation around the often ignored issue of men's health.

The funds raised through the Movember campaign are allocated to programs in line with Movember's vision and strategic goals. In Australia, funds are committed to programs supporting prostate cancer and male depression initiatives. Some of these programs are carried out directly by Movember and some through our men's health partners in Australia; the Prostate Cancer Foundation of Australia and beyondblue: the national depression initiative.

Movember has been endorsed by the Australian Taxation Office as a deductible gift recipient and for various charity tax concessions.

Further information about Movember is available on our website at www.movember.com.

General comments

Movember enthusiastically welcomes a proposed nationally consistent approach to the regulation of charitable fundraising. As a charity that operates nationally, the duplication of fundraising regulation creates a significant time and cost burden on our resources.

We have reviewed the Paper and set out our responses to some of the discussion questions.

Responses to discussion questions

Qu	Comment
2.5	<p><i>Are there additional fundraising activities that should be exempt from fundraising regulation?</i></p> <p>Movember considers that any definition of “fundraising activities” should not capture the activities of individuals that participate in fundraising campaigns by soliciting donations in circumstances where those donations are remitted directly to a registered charity.</p> <p>For example, in the annual Movember campaign, “Mo Bros” register at www.movember.com and set up a “Mo Space” on the website. They then solicit donations from their friends and families to support their mo-growing efforts. Their friends and families can make credit card donations via the website, and those donations go directly into Movember’s bank account.</p> <p>We believe that it would be inappropriate for these individuals to be covered by fundraising regulation, because:</p> <ul style="list-style-type: none"> • these individuals never have any custody or control of the funds that are donated in their name; • this would be a significant disincentive to participate in the campaign. <p>I note that Movember has a number of individuals and teams (in particular corporate teams) that would raise funds in excess of the proposed \$50,000 fundraising threshold, and we are concerned that these individuals and organisations may inadvertently be captured by the definition of “fundraising activities” unless they are specifically excluded.</p>
2.8	<p><i>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?</i></p> <p>Our response on this question is based on the understanding that charities that fall under the proposed national fundraising regulation would not also be required to comply with pre-existing State and Territory regulation. Movember would not support national fundraising regulation if charities would also be required to comply with State and</p>

	<p>Territory regulation. In this respect we are concerned by the statement in paragraph 25 of the Paper that “State and Territory governments <i>may</i> decide to exempt those charities covered by the national law from State and Territory fundraising laws” (emphasis ours).</p> <p>So, presuming that charities that comply with the national law are exempt from the State and Territory laws, it may be preferable to give charities below the monetary threshold the ability to opt in to the national approach. Smaller charities may still operate on a national basis and it would seem an odd result if these smaller charities retained the burden of compliance with different State and Territory requirements when larger charities had the benefit of the “one stop shop” national approach.</p>
<p>3.1</p>	<p><i>Should the aforementioned provisions of the ACL apply to the fundraising activities of charities?</i></p> <p>Movember supports the application of the relevant provisions of the ACL to fundraising activities of charities.</p> <p>We note however that if this change were implemented by way of an amendment to the ACL, then a number of related matters would need to be considered, including:</p> <ul style="list-style-type: none"> • who would enforce these provisions – the ACCC or the ACNC? • which remedy provisions in the ACL should apply to infringements by charities? For example, we consider that the infringement notice remedy in the ACL is not an appropriate remedy to apply to a charity. • If the ACCC were to enforce the ACL provisions in relation to charities, would it require charities to roll out ACL compliance programs?
<p>4.1</p>	<p><i>Should all charities be required to state their ABN on all public documents? Are there any exceptions that apply?</i></p> <p>Movember supports full disclosure and transparency by charities and already publishes on its website a large amount of information regarding its finances and programs.</p> <p>In principle, Movember supports the requirement to state the ABN on public documents. However, we believe that consideration needs to be given to what is considered to be a “public document” especially given the increasing use of electronic and social media in the NFP sector. Movember communicates with the Movember community in a variety of ways, including via various social media platforms. For example, it would be impractical to require the ABN to be included in tweets or Facebook posts. In addition, when using electronic media, the user can usually link straight to the charity’s website for further information about that charity and for details about that charity’s ABN.</p>

<p>6.1</p>	<p><i>Should internet and electronic fundraising be prohibited unless conducted by a charity registered with the ACNC?</i></p> <p>Whilst the Paper lists the perceived higher risks posed by internet and electronic fundraising, we consider it is equally important to focus on the benefits associated with these fundraising methods. For example, online fundraising is low cost and efficient, often innovative and can be a successful method for engaging with younger members of the community. We would be disappointed if the proposed national fundraising regulation made this type of community engagement unduly difficult or impractical.</p> <p>We would also challenge the assumptions made in the Paper regarding the perceived “higher risks posed by internet and electronic fundraising”. In particular we note:</p> <ul style="list-style-type: none"> • Members of the public are generally substantially more wary about using their credit card on the internet than they would be making a cash donation to a street collector; • It would be as easy, if not easier, to fraudulently pose as a charity’s street collector and collect cash donation than it would be to set up a fraudulent internet site accepting credit card donations – the latter requiring arrangements with banks, credit card providers and internet payment providers, all of which require substantial documentation prior to establishing accounts; • In relation to the potential for nuisance to be created, we would seriously question whether emails and SMS messages create greater nuisance than unsolicited telephone calls. <p>In this context, as a general principle we are unsure that “electronic fundraising” should be subject to a different regime than any other sort of fundraising.</p> <p>In relation to the specific proposal that only charities registered with the ACNC be allowed to engage in electronic fundraising, it is difficult to comment without knowing how easy/difficult it will be for charities to register with the ACNC. If this turns out to be a costly or time consuming process then smaller charities may choose not to be registered and would then be unable to engage in efficient and low cost electronic fundraising.</p>
<p>6.2</p>	<p><i>Should charities conducting internet or electronic fundraising be required to state their ABN on all communications? Could this requirement be impractical in some circumstances?</i></p> <p>We re-iterate the comments made above (in relation to question 4.1) about the information requirements for forms of electronic communication.</p> <p>We also note that the <i>Spam Act 2003 (Cth)</i> imposes a number of requirements on</p>

	<p>organisations in relation to electronic messages. Whilst charities are exempt from some of these provisions (for example the requirement to have the recipient's consent¹), charities are still required to comply with the information requirements².</p>
7.7	<p><i>Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?</i></p> <p>As noted in paragraph 76 of the paper, many for-profit entities become involved in charitable fundraising to promote their public profile as socially responsible entities. In addition, for-profit entities often wish to associate themselves with charities simply to enhance their own sales – this frequently happens without the approval of the relevant charity.</p> <p>Movember considers that for-profit private participators should be required to obtain written authorization from a charity if that private participator wishes to engage in any sales promotional activity that purportedly benefits that charity. This would cover activity such as offers where a percentage of sales are contributed to a charity, but would exclude activity such as employee donation matching.</p>

Please contact me on (03) 8416 3900 or via email on astrid@movember.com if you would like to discuss these submissions in further detail.

Yours sincerely,



Astrid Heward
General Counsel

¹ Section 16(1)(a) of the Spam Act 2003 (Cth)

² Section 17 of the Spam Act 2003 (Cth)