



YWCA Australia

Charitable fundraising regulation reform

Discussion Paper Response

April 2012

Introduction

YWCA Australia welcomes the opportunity to comment on a proposed framework for a nationally consistent approach to charitable fundraising regulation.

About us

YWCA Australia is the national association of YWCAs in Australia and is part of the World YWCA movement.

We are a women-led organisation that achieves positive change by providing advocacy, programs and services for women, families and communities. YWCAs undertake advocacy and deliver services and programs that develop the leadership and collective power of women and girls, support individuals, their families and communities at critical times, and promote gender equality and community strengthening.

YWCAs have been providing community services in Australia since the 1880s.

General principles

It is well-recognised that different state and territory fundraising laws add significant cost and complexity to fundraising work by charitable not for profit organisations, particularly for charities operating at a national level, which have to comply with multiple legislative and administrative requirements.¹

YWCA Australia supports the introduction of a single national fundraising regulation framework that is administered by the Australian Charities and Not for Profit Commission (ACNC) and which sits within the overall context of other sector reforms being progressed by the Australian Government, such as the development of a definition of charity and proposed ACNC reporting requirements.

In our view, fundraising regulation reform has the potential to reduce regulatory burden on the sector and associated costs. The reform will also help to ensure transparency and accountability to donors, beneficiaries, other stakeholders, and the public, which ultimately assists the financial independence and effectiveness of charitable organisations. We also note that the proposed ACNC public information portal that will include financial and other information provided by registered charities will also promote transparency and public monitoring, and has the potential to reduce the need for more prescriptive fundraising regulation.

YWCA Australia strongly supports principles-based regulation to achieve regulatory objectives, allowing flexibility for charities to adapt to technological or social changes while also allowing regulators and courts to intervene when conduct falls outside the set standards enshrined in the laws.

¹ See, for example, Productivity Commission, *Research Report into the Contribution of the Not-for-Profit Sector*, 2010, p.137.

However, it's important that the introduction of a national regime does not unintentionally result in a reduction of independent funding for charities.

A sufficient transition period and supporting education for the fundraising reforms are also vital.

Responses to specific consultation questions

Please note that we have confined our submission to selected consultation questions:

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

Yes. Specific best-practice fundraising regulation promotes consistency, transparency, accountability and good governance in the sector.

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.

YWCA Australia, a national association, found it difficult to know where to apply for fundraising registration – determining this had an impact on the limited time and resources of the organisation.

We note that the Productivity Commission's 2010 *Research Report into the Contribution of the Not for Profit Sector* referred to an example in a submission to the Commission by the Fundraising Institute of Australia (sub.77) that World Vision Australia has stated that reporting in line with inconsistent fundraising legislation costs it at least \$1 million per year²

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

In our view the above activities (soliciting for government grants, corporate donations or donations from public and private ancillary funds, workplace appeals for assistance for colleagues and their families, and donations to religious organisations from their own members) should be exempted from fundraising regulation as there is not the same imbalance of information between the parties that other fundraising activities entail.

We recommend that donations to **other membership based organisations** (such as the YWCA) from their own members (including bequests) should also be exempted from fundraising regulation, again because of the information about the organisation that the donor has. In particular, bequests are often accompanied by their own accountability provisions.

We suggest that, as a matter of best-practice, membership organisations share the impact of what they do with their members. However, this requirement should not be mandatory.

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

In our view, national fundraising regulation should not be limited to large amounts. YWCA Australia would prefer to see all fundraising covered by a single national regulatory framework than to have different frameworks continuing to apply. In our view, it is preferable

² See p. 137

that all aspects of fundraising be regulated by a single body to avoid duplication and complication, including lotteries regulation. Please see our answer to consultation question 2.8 below for more information.

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?

We would be extremely concerned to see a perverse situation develop where larger organisations have a streamlined, best-practice regulatory framework and smaller organisations raising smaller amounts - the least resourced - are left with outdated or unwieldy State/Territory laws to deal with.

Additionally, applying a monetary threshold would not provide charities with clarity. The use of a threshold has many administrative issues, as entities may fall above or below the thresholds from year to year and it may be difficult to determine when a threshold has been reached. Charities growing their fundraising would need to engage with both State/Territory fundraising laws and national fundraising laws until they reached the threshold amount, with associated extra monitoring and compliance burdens.

If a threshold were to be imposed, we recommend that it be annually indexed.

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?

Yes. We suggest two financial years.

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

We support the ACNC administering national fundraising regulation. The proposed ACNC reporting requirements should be adequate to meet requirements that arise from the national fundraising framework.

The ACNC should also have a role in supporting charities to become compliant with the new legislation. Please see our answer to consultation question 3.1 below for more information.

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

As charities will generally register with the ACNC, we support the proposal to allow all charities registered with the ACNC to also be authorised to engage in fundraising activities across Australia. We agree that this approach would have the benefit of reducing complexity for participants in the sector and also improve transparency for donors. The proposal appears simple, cost-effective and would prevent duplication of registering and reporting requirements.

However we support this on the basis that reporting requirements will be proportional to the amount of funds raised and that there will be no additional administrative burden for organisations that do not intend to fundraise.

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

We recommend that charities authorised for fundraising be guided to report on fundraising activities in their annual report, and that the reporting should be proportional to the amount of funds raised.

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

Depending on the severity of the conduct, charities should be banned from fundraising for misappropriation, misleading and deceptive conduct and fraudulent statements, unconscionable conduct, and harassment and coercion. We agree that extending some of the generic conduct provisions in the Australian Consumer Law (ACL) to fundraising activities may be an effective and efficient way to regulate fundraising.

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

YWCA Australia supports the misleading or deceptive conduct (section 18); unconscionable conduct (sections 20-22); false or misleading representations (section 29); and harassment and coercion (section 50) provisions of the ACL specifically applying to fundraising activities. These provisions are extremely relevant to the conduct of fundraising and there is a well-developed understanding of the way the provisions generally operate.

However we disagree with the idea that applying these provisions to charities is unlikely to impose significant additional costs on the sector. Although some charities would already have robust consumer protection-type policies and procedures in place, regulated entities would need to review all their policies and procedures to ensure that they comply with the ACL-equivalent provisions. For some, significant additional work may be required to ensure full compliance, including that employees and volunteers of charities fully understand how to comply with the legislation to ensure that they do not unwittingly breach their obligations. A misleading representation may be as simple as a volunteer saying that a donor's funds will be used for one type of program, when the funds will actually be used to fund other programs.

We recommend the ACNC supporting charitable organisations to comply with the legislation, and that the ACNC is **adequately funded to provide such assistance**. If charities needed to engage lawyers or other consultants to understand and implement their obligations, a significant cost burden would be placed on them.

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

Yes. YWCA Australia supports adoption of the calling hours outlined in Section 73 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?

YWCA Australia supports the ACL unsolicited selling provisions applying to activities of a charity if the relevant activities are 'in trade or commerce' and there is a 'supply of goods or services' exceeding \$100. In our view, it is important that consumer protection provisions apply when charitable entities act as businesses whilst ensuring there is no conflict with

prevailing corporate/consumer laws.

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

We are unsure of the benefit of requiring all charities to state their ABN on all public documents. The name of the registered charity is a more useful way to identify and authenticate a charity. The ACNC public portal will allow a charity's ABN to be easily found.

The meaning of 'all public documents' is very broad. Specific definitions of 'public documents' would be needed, adding complexity to the regulation framework. Again, if this requirement is introduced, charities may need to destroy existing documents - adding greatly to costs.

YWCA Australia suggests that any requirements relating to the provision of ABNs be consistent with corporations law.

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?

YWCA Australia supports persons engaged in charitable fundraising activities being required to provide the name of the charity. However we don't support a requirement for information about whether the collector is paid to be provided.

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

Yes. YWCA Australia suggests that persons engaged in charitable fundraising activities be required to wear a numbered identification badge or card which includes the name and contact phone number of the charity, the name of the bearer, and the issue and expiry date of the badge (modelled on New South Wales legislative requirements).³

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

Yes. These requirements should be the name of charity and basic contact details such as a phone number or website.

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

Yes, as this will assist donors to claim their tax deductions easily. We note that charities with Deductible Gift Recipient status would usually be extremely happy to provide this information to potential donors.

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

³ See http://www.olgr.nsw.gov.au/charitable_what_controls.asp#dis

No. We don't support this requirement. Such a requirement would require all charities to destroy any existing public documents to ensure compliance – an action most charities simply could not afford. It may also be impractical when producing short public documents.

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

If qualitative elements are introduced they should be in line with requirements established for the annual qualitative reporting to the ACNC. Reporting requirements need to be proportionate to the risks and the amount of funds involved. Reporting requirements also need to consider any additional costs they impose on charities.

We note that it is best-practice to provide this level of detail in an organisation's annual report, but this should not be compulsory. It may be particularly difficult for smaller organisations to report in this way.

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?

Again, we support reporting on productive outcomes but the reporting requirements must be clear and proportionate to the risks and the amount of funds involved as this level of reporting will be costly to administer. As above, we suggest that a charity's annual report may be used a mechanism to report in this way.

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

Reporting on fundraising should be incorporated into the general ACNC reporting framework and be consistent with corporations law.

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

Fundraising income and expenses should be easily identifiable within the records kept regardless of the method of fundraising used.

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

Yes. We agree that the potential for fraud and public nuisance is extremely high and this would be an appropriate response.

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?

Please refer to our answer to consultation question 4.1. The same considerations apply to this proposal. Also, this could be impractical for communications via mobile phones or small documents.

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

YWCA Australia suggests that a charity's technology platform should create and send an immediate receipt in response to internet or electronic donation, including all relevant details of the charity, DGR status etc.

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

Yes. Conduct of a charity's volunteers should be regulated as part of regulating the charity's fundraising activities.

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

In our view, it is important that third party fundraisers clearly identify the charity for which they are collecting. However, the name of the charity is sufficient identification. Please refer to our answer to consultation question 4.1.

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?

No. it is important that third party fundraisers clearly identify the charity for which they are collecting, but we don't support requiring them to state the fees that they are paid for their services.

However, some regulation of the percentage of donations that third party fundraisers can be take for their fees may be worth considering (that is, a cap).

More information

Thank you for the opportunity to provide this submission.

For more information please contact:

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